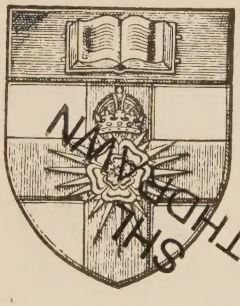
[H-table]



UNIVERSITY OF LONDON
LIBRARY

Digitized by the Internet Archive
in 2026

https://archive.org/details/public-law_1960

PUBLIC LAW 1960

AUSTRALIA
The Law Book Co. of Australasia Pty Ltd
Sydney : Melbourne : Brisbane

CANADA AND U.S.A.
The Carswell Company Ltd.
Toronto

INDIA
N. M. Tripathi Private Ltd.
Bombay

NEW ZEALAND
Sweet & Maxwell (N.Z.) Ltd.
Wellington

PAKISTAN
Pakistan Law House
Karachi

PUBLIC LAW

incorporating

THE BRITISH JOURNAL OF ADMINISTRATIVE LAW

1960

EDITOR

J. A. G. GRIFFITH

Professor of English Law in the University of London

ASSISTANT EDITOR

GEOFFREY MARSHALL

Fellow of The Queen's College, Oxford

LONDON

STEVENS & SONS LIMITED

1960

Published by
Stevens & Sons Limited
of 11 New Fetter Lane
in the City of London
and printed in Great Britain
by The Eastern Press Limited
of London and Reading

©
Stevens & Sons Limited and Contributors
1960

EDITORIAL BOARD

D. V. COWEN
Professor of Comparative and Commercial Law, University of Cape Town

S. A. DE SMITH
Professor of Public Law, University of London

ALAN GLEDHILL
Professor of Oriental Laws, University of London

C. J. HAMSON
Professor of Comparative Law, University of Cambridge

R. M. JACKSON
Reader in Public Law and Administration, University of Cambridge

LOUIS L. JAFFE
Byrne Professor of Administrative Law, Harvard University

SIR IVOR JENNINGS, Q.C
Master of Trinity Hall, Cambridge

F. H. LAWSON
Professor of Comparative Law, University of Oxford

J. D. B. MITCHELL
Professor of Constitutional Law, University of Edinburgh

O. HOOD PHILLIPS
Barber Professor of Jurisprudence, University of Birmingham

WILLIAM A. ROBSON
Professor of Public Administration, University of London

G. SAWER
Professor of Law, Australian National University, Canberra

F. R. SCOTT
Professor of Law, McGill University, Montreal

HARRY STREET
Professor of Public Law and Common Law, University of Manchester

SIR A. LYNN UNGOED-THOMAS,
Member of Parliament

E. C. S. WADE, Q.C.
Downing Professor of the Laws of England, University of Cambridge

K. C. WHEARE
Rector of Exeter College, Oxford

EDITOR

J. A. G. GRIFFITH
Professor of English Law, University of London

ASSISTANT EDITOR

GEOFFREY MARSHALL
Fellow of The Queen's College, Oxford

PUBLISHING MANAGER

P. H. B. ALLSOP
Barrister-at-Law

CONTRIBUTORS OF ARTICLES

BLAIR, Leo. Public Employment—an Australian Contrast 246

BLOM-COOPER, L. J. An Ombudsman in Britain 145

CRICK, Bernard. Some Reflections on the late Election 36

GONIDEC, P. F. "La Communauté" 177

GREENLEAF, W. H. Urgency Motions in the Commons 270

LEYS, Colin. The Case against Federation in Central Africa 18

MANDELKER, Daniel R. Planning Appeals and the Adjudication of Policy 256

MITCHELL, J. D. B. The Flexible Constitution 332

PHILLIPS, O. Hood. The Constitution of the State of Singapore 50

SELF, Peter (and STORING, Herbert). The Birch in the Cupboard 367

STORING, Herbert (and SELF, Peter). The Birch in the Cupboard 367

WADE, H. W. R. The Council on Tribunals 351

WILLIAMS, Christopher. The English Prosecution 170

YAMEY, B. S. Restrictive Agreements and the Public Interest: A Critique of the Legislation 152

PARLIAMENTARY PAPERS 1959–60

UNITED KINGDOM

[All references to H.C. and H.L. Papers are to the 1959–60 Session unless otherwise stated]

Courts

Cmnd. 850. Civil judicial statistics (Scotland) for 1958 74
Cmnd. 918. Legal Aid, report of advisory committee 74
Cmnd. 962. Legal Aid, further report of advisory committee 190
Cmnd. 1015. Legal Aid in Criminal Proceedings, report of committee 287
Cmnd. 1047. Civil judicial statistics (Scotland) for 1959 397
Cmnd. 1126. Civil judicial statistics for 1959 397
H.C. 166. Legal Aid Fund, account for 1958–59 285
H.C. 197. Legal Aid (Scotland) Fund, account for 1958–59 285

Education

Cmnd. 929. Youth Service, report of the Albemarle Committee 191
Cmnd. 1051. Grants to Students, report of the Anderson Committee ... 287

Government Functions and Appointments

Cmnd. 827. Report of the Radcliffe Committee for 1958 76
Cmnd. 844. Chief Inspector of Fire Services, report for 1958 75
Cmnd. 870. Post office, report and accounts for 1958–59 76
Cmnd. 871. Ministry of Health, report for 1958, Part II 76
Cmnd. 893. Advisory Council for scientific policy, report for 1958–59 76
Cmnd. 952. Defence report for 1960 195
Cmnd. 973. Post office, report on capital expenditure 1960–61 195
Cmnd. 983. Department of Health for Scotland, report for 1959 288
Cmnd. 989. Post office, proposals for its future 195
Cmnd. 1018. Education in Scotland, report for 1959 288
Cmnd. 1027. Ministry of Housing and Local Government, report for 1959 288
Cmnd. 1028. Department of Agriculture for Scotland, report for 1959 288
Cmnd. 1046. Inspector of Constabulary for Scotland, report for 1959 288
Cmnd. 1049. Department of Scientific and Industrial Research, report for 1959 289
Cmnd. 1058. Civil service, staffs employed 287
Cmnd. 1059. Ministry of Labour, report for 1959 289
Cmnd. 1069. Agricultural Research Council, report for 1958–59 399
Cmnd. 1086. Ministry of Health, report for 1959, Part I 399
Cmnd. 1088. Ministry of Education, report for 1959 398
Cmnd. 1122. Chief Inspector of Fire Services, report for 1959 398
Cmnd. 1133. Ministry of Pensions and National Insurance, report for 1959 399
H.C. 38. National Research Development Corporation, report and accounts for 1958–59 76
H.C. 134. Agricultural Land Commission, accounts for 1958–59 194
H.C. 145. Agricultural Research Fund, account for 1958–59 196
H.C. 149. National Land Fund, account for 1958–59 288
H.C. 257. Inspectors of Constabulary for England and Wales, reports for 1958–59 398

Highways

H.C. 42. Roads in England and Wales, report for 1958–59 77

Housing

Cmnd. 1112. Housing Return for Scotland 399
Cmnd. 1119. Housing Return for England and Wales 399
Cmnd. 1145. Housing Summary 399

Local Government

Cmnd. 914. Children, number in the care of local authorities 78
H.C. 36. Ministry of Housing and Local Government, report on the General Grant Order, 1959 78
H.C. 82. Secretary of State for Scotland, report on the General Grant (Increase) (Scotland) Order, 1960 198

Monopolies and Restrictive Practices

H.C. 128. Monopolies Commission, references 201
H.C. 267. (1958–59.) Monopolies Commission, report on the supply of chemical fertilisers 201

National Health Service

Cmnd. 939. Royal Commission on remuneration, report 202
Cmnd. 1064. Royal Commission on remuneration, supplement to report 292
H.C. 147. Hospital Boards, Dental Estimates Board, accounts for 1958–59 291
H.C. 148. Hospital Boards, Dental Estimates Board (Scotland), accounts for 1958–59 291
H.C. 231. Central Health Services Council, report for 1959 402

National Insurance

Cmnd. 964. Long-Term Hospital Patients, report of National Insurance Advisory Committee 204
Cmnd. 1021. Doctors and Midwives Certificates, report of National Insurance Advisory Committee 294
H.C. 183, 213, 214. Contributions, reports of National Insurance Advisory Committee 292
H.C. 193. Classification, report of National Insurance Advisory Committee 292
H.C. 227. Quinquennial review of the Ministry of Pensions and National Insurance 409
H.C. 275. General Benefit and Contributions, report of National Insurance Advisory Committee 404
H.C. 276. Hospital In-Patients, report of National Insurance Advisory Committee 408
H.C. 277. Unemployment and Sickness Benefit, report of National Insurance Advisory Committee 405
H.C. 282. Married Women, report of National Insurance Advisory Committee 405

National Insurance (Industrial Injuries)

H.C. 300. Second Quinquennial Review, report of Government Actuary 411

Nationalised Industries

Cmnd. 911. Public Boards of a commercial character, list of members 96
Cmnd. 993. Capital investment in coal, electricity and gas industries 297

Nationalised Industries—*continued*

H.C. 8, 9, 101, 102, 198, 199, 295, 296. Guarantees on loans, Airways Corporations 96, 206, 298, 411
H.C. 10, 12, 13, 103, 105, 106, 201, 203, 204, 288, 289, 297. Guarantees on loans, Electricity Corporations 97, 206, 298, 412
H.C. 11, 104, 202, 298. Guarantees on loans, Gas Council ... 97, 206, 298, 412
H.C. 14, 107, 205, 299. Guarantees on loan, British Transport Commission 98, 206, 299, 412
H.C. 85, 124. Electricity and Gas Corporations, accounts of advances for 1958–59 205
H.C. 92, 93. Scottish Electricity Boards, reports and accounts for 1959 206
H.C. 155. National Coal Board, accounts of advances for 1958–59 298
H.C. 174, 175, 176. Transport Consultative Committees, reports for 1959 299
H.C. 184. Atomic Energy Authority, Balance Sheet for 1959 298
H.C. 191, 192. National Coal Board, report and accounts for 1959 ... 298
H.C. 223. B.O.A.C., B.E.A., and B.T.C., accounts of advances for 1958–59 298
H.C. 226, 226–I. B.T.C., report and accounts for 1959 299
H.C. 243. Atomic Energy Authority, report for 1959–60 412
H.C. 254. British Railways, report of Select Committee on Nationalised Industries 412
H.C. 266, 267. B.O.A.C., B.E.A., report and accounts for 1959–60 ... 412
H.C. 303–317. Electricity Corporations, reports and accounts for 1959–60 412
H.C. 529. (1958–59.) B.O.A.C., report and accounts for 1958–59 ... 96
H.C. 260. (1958–59.) Air Transport Advisory Council, report for 1958–59 96
H.C. 286–297. (1958–59.) Gas Corporations and Consultative Councils, reports and accounts for 1958–59 98

Parliament

H.L. (11). Select Committee on Leave of Absence, first report 98
H.L. (18), (106). Select Committee on the House of Lords offices, first and second reports 98, 299
H.L. (79), (100). Select Committee on procedure, first and second reports 300
H.C. 316–I. (1958–59.) Estimates Committee, fifth report, on the Atomic Energy Authority 98
H.C. 317. (1958–59.) Estimates Committee, minute of proceedings ... 98
H.C. 25, 80, 172, 250, 290, 291, 292. Estimates Committee, first, second, third, fourth, fifth, sixth and seventh special reports ... 98, 208, 299, 412
H.C. 51. Public Accounts Committee, special report 209
H.C. 76–I, 93–I, 201–I, 248–I. Public Accounts Committee, special report and first, second and third reports 98
H.C. 249. Estimates Committee, first report, on Admiralty Headquarters Organisation 412
H.C. 256. Public Accounts Committee, second report 413
H.C. 260. Estimates Committee, fourth report, on the Colonial Office 412
H.C. 284, 284–I. Committee of Privileges, report on complaint of a letter from Mr. Jordan 413

Public Authorities

Cmnd. 908. Central Land Board, report for 1958–59 100
Cmnd. 909. Royal Fine Art Commission, report for 1958–59 101

Public Authorities—*continued*

Cmnd. 911. Public Boards of a commercial character, list of members 100
Cmnd. 922. Commissioners of Inland Revenue, report for 1958–59 ... 209
Cmnd. 982. Royal Fine Art Commission for Scotland, first report ... 300
Cmnd. 1050. Herring Industry Board, report for 1959 300
Cmnd. 1085. National Assistance Board, report for 1959 413
Cmnd. 1096. National Film Finance Corporation, report and accounts for 1959 413
H.C. 256. (1958–59) and Cmnd. 892. Board of Control, reports for 1958–59 100
H.C. 275. (1958–59.) Sugar Board, report for 1958–59 101
H.C. 315. (1958–59.) New Towns, reports for 1958–59 101
H.C. 1. Agricultural Land Commission, report for 1958–59 100
H.C. 3. New Towns, reports for 1958–59 101
H.C. 57. Iron and Steel Holding and Realisation Agency, report and accounts for 1958–59 210
H.C. 77. White Fish Authority, accounts for 1958–59 210
H.C. 131. Iron and Steel Board, remuneration of deputy chairman 209
H.C. 137. Sugar Board, accounts for 1958–59 210
H.C. 162. Forestry Commission, report for 1958–59 300
H.C. 165. Iron and Steel Realisation Account, accounts for 1958–59 300
H.C. 185, 186, 187. Historic Buildings Council, reports for 1959 300
H.C. 216. Ancient Monuments Boards, reports for 1959 300
H.C. 217. Iron and Steel Board, report for 1959 300
H.C. 235. White Fish Authority, report and accounts for 1959–60 ... 413
H.C. 268. New Towns, reports for 1959–60 413
H.C. 285. Sugar Board, report and accounts for 1959–60 413

Subordinate Legislation

H.L. (3) (25) (41) (51) (61) (64) (75) (84) (107) (124) (138) (145). Special Orders Committee, reports 103, 211, 302, 415
H.C. 18, 18–II, 18–III, 18–IV, 18–V, 18–VI, 18–VII, 18–VIII, 18–IX, 18–X, 18–XI, 18–XII, 18–XIII, 18–XIV, 18–XV, 18–XVI. Select Committee on Statutory Instruments, reports 103, 210, 302, 415

Town and Country Planning

H.C. 150. Accounts (Scotland) 302
H.C. 333. Accounts 415

Tribunals and Judicial Functions of Ministers

Cmnd. 1033. Powers of Subpoena, report of Committee 304

Wales

Cmnd. 961. Report on developments and Government action 213, 421

Wireless and Television

Cmnd. 834. B.B.C., report and accounts for 1958–59 106
Cmnd. 1066. B.B.C., agreement with Postmaster-General 305
H.C. 2. I.T.A., report and accounts for 1958–59 106
H.C. 45. I.T.A., accounts of advances for 1958–59 106

Commonwealth and Dependent Territories

Cmnd. 786. Colonial Development Corporation, report of inquiry into financial structure 106
Cmnd. 897. Basutoland, proposed constitution 107

Cmnd. 938. Colonial Research, report 213
Cmnd. 960. Kenya, Constitutional Conference Proposals 219
Cmnd. 984. British Honduras Conference, report 214
Cmnd. 1063. Nigeria Constitutional Discussions, report 307
Cmnd. 1065. Colonial Territories, report for 1959–60 305
Cmnd. 1093. Cyprus, treaties, etc. 423
Cmnd. 1123. Trinidad and Tobago, report 432
Cmnd. 1148. Rhodesia and Nyasaland, Monckton Report 324–329
Cmnd. 1149. Appendix VI to the Monckton Report 324–329
Cmnd. 1150. Rhodesia and Nyasaland, possible Constitutional changes 324–329
H.C. 211. Colonial Development Corporation, report and accounts for 1959 ..... 305, 422
H.C. 244. Colonial Development, return 421

GOVERNMENT CIRCULARS

Ministry of Housing and Local Government—

No. 58/59 103
No. 2/60 196
No. 3/60 211
No. 10/60 212
No. 32/60 288
No. 37/60 417
No. 42/60 416
No. 44/60 399
No. 51/60 400

BOOK REVIEWS

Annual Survey of South African Law 1958 128
Benn, S. I. and Peters, R. S. Social Principles and the Democratic State 320
Cross, C. A. Principles of Local Government Law 127
de Smith, S. A. Judicial Review of Administrative Action 121
Dicey, A. V. Introduction to the Study of the Law of the Constitution (10th ed.) 318
Fifoot, C. H. S. Judge and Jurist in the Reign of Queen Victoria 316
Ginsberg, Morris (Ed.). Law and Opinion in England in the Twentieth Century 122
International Lawyers' Convention in Israel 1958 435
Marshall, Geoffrey. Parliamentary Sovereignty and the Commonwealth 126
Marshall, Geoffrey and Moodie, Graeme C. Some Problems of the Constitution 124
Marshall, H. H. Natural Justice 435
Pickles, William. The French Constitution of October 4, 1958 436
Verney, Douglas V. Public Enterprise in Sweden 316
Vinogradoff, Sir Paul. Common Sense in Law (3rd ed.) 317

STATUTES

[*Only statutes substantially discussed or reported are included*]

1959	Mental Health Act (7 & 8 Eliz. 2, c. 72)	81
	Atomic Energy Authority Act (8 Eliz. 2, c. 5)	96
	Sea Fish Industry Act (8 Eliz. 2, c. 7)	101
	Judicial Pensions Act (8 Eliz. 2, c. 9)	74
1960	Distress for Rates Act (8 & 9 Eliz. 2, c. 12)	197
	Road Traffic Act (8 & 9 Eliz. 2, c. 16)	210
	Coal Industry Act (8 & 9 Eliz. 2, c. 17)	206
	Local Employment Act (8 & 9 Eliz. 2, c. 18)	209
	Requisitioned Houses Act (8 & 9 Eliz. 2, c. 20)	196
	Iron and Steel (Financial Provisions) Act (8 & 9 Eliz. 2, c. 26)	300
	Gas Act (8 & 9 Eliz. 2, c. 27)	298
	Legal Aid Act (8 & 9 Eliz. 2, c. 28)	285
	Ghana (Consequential Provisions) Act (8 & 9 Eliz. 2, c. 41)	307
	Corporate Bodies' Contracts Act (8 & 9 Eliz. 2, c. 46)	400
	Offices Act (8 & 9 Eliz. 2, c. 47)	400
	House of Commons (Members' Fund) Act (8 & 9 Eliz. 2, c. 50)	413
	Cyprus Act (8 & 9 Eliz. 2, c. 52)	423
	Nigeria Independence Act (8 & 9 Eliz. 2, c. 55)	426
	Caravan Sites and Control of Development Act (8 & 9 Eliz. 2, c. 62)	416

STATUTORY INSTRUMENTS

1959

1676. Mental Health Act, 1959 (Commencement No. 1) Order 81
1732. Lands Tribunal (Amendment) Rules 104
1768. Minister of Aviation Order 75
1769. Minister of Labour Order 76
1771. Gambia (Electoral Provisions) Order in Council 112
1772. Nigeria (Constitution) (Amendment No. 3) Order in Council 114
1826. Minister for Science Order 76
1827. Service Departments Supply (No. 1) Order 75
1828. Transfer of Functions (Gun Barrel Proof Acts) Order 75
1829. Transfer of Functions (Construction of Ships) Order 76
1915. Town and Country Planning (Delegation) Regulations 103, 211
1970. Ministry of National Service (Dissolution) Order 76
1975. Service Departments Supply (No. 2) Order 75
1977. Sierra Leone and Gambia Court of Appeal Order in Council ... 117
1978. Sierra Leone and Gambia (Appeals to Privy Council) Order in Council 117
1981. Nigeria (Constitution) (Amendment No. 4) Order in Council 114
1982. Nigeria (Offices of Governor-General and Governors) (Amendment No. 3) Order in Council 114
1983. Somaliland (Constitution) (No. 2) Order in Council 117
1993. Coal Industry Nationalisation (Borrowing Powers) Order 97
2044. Tribunals and Inquiries Act, 1958 (Commencement No. 2) Order 104
2067. Pensions Appeal Tribunals (Scotland) (Amendment) Rules 105
2119. National Insurance (Non-Participation—Appeal and Referees) Regulations 105
2162. General Grant (Increase) Order 78
2197. Windward and Leeward Islands (Courts) Order in Council 232
2198. Windward and Leeward Islands (Police Service Commission) Order in Council 232
2199. Dominica (Constitution) Order in Council 216
2200. Grenada (Constitution) Order in Council 219
2201. St. Vincent (Constitution) Order in Council 223
2202. Jamaica (Constitution) (Amendment) Order in Council 219
2203. East Africa (High Commission) (Amendment) Order in Council 111
2206. Leeward Islands (Emergency Powers) Order in Council 232
2210. Commonwealth Institute Order 214
2260. Fire Services Act (Commencement No. 3) Order 199

1960

66. Town and Country Planning (Control of Advertisements) Amendment Regulations 211
130. Fire Services (Appointments and Promotion) Regulations 199
135. Treasury (Loans to Local Authorities) (Interest) Minute 197
202. Dominica (Constitution) (Amendment) Order in Council 217
203. Nigeria (Constitution) (Amendment) Order in Council 222
204. Northern Rhodesia Order in Council 223
205. Somaliland (Constitution) Order in Council 224
206. Tanganyika (Legislative Council) (Amendment) Order in Council 229
207. Kuwait (Amendment) Order 222
257. Legal Aid and Advice Act, 1949 (Commencement No. 7) Order ... 190

1960

278. National Insurance (Earnings) Regulations 204
282. Town and Country Planning (Use Classes) (Amendment) Order ... 212
283. Town and Country Planning General Development (Amendment) Order 212
292. General Grant (Increase) (Scotland) Order 198
350. Pensions Appeal Tribunals (Scotland) (Amendment) Regulations 213
407. Legal Aid and Advice Act, 1949 (Commencement No. 8) Order ... 190
408. Legal Aid (General) Regulations 190
440. Sierra Leone and the Gambia Court of Appeal (Amendment) Order in Council 223
441. Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) (Amendment) Order in Council 214
496. Legal Aid (Scotland) Act, 1949 (Commencement No. 4) Order ... 191
497. Legal Aid (Scotland) (Section 5) Regulations 191
543. Election Petition Rules 207
562. Local Employment Act, 1960 (Commencement Order) 209
695. Town and Country Planning (Control of Advertisements) Regulations 302
701. Gambia (Constitution) Order in Council 306
702. Gambia Protectorate (Amendment) Order in Council 307
725. Legal Aid (Scotland) (General) (No. 5) Regulations 286
729. Legal Advice (Amendment) Regulations 286
730. Legal Aid (General) (Amendment) Regulations 286
756. Legal Aid (Scotland) (Section 5) Regulations 286
757. Legal Advice (Scotland) Amendment Regulations 287
781. National Insurance (Unemployment and Sickness Benefit) Regulations 292
782. National Insurance (Contributions) Amendment Regulations 292
810. Tribunals and Inquiries (Mental Health Review Tribunals) Order 304
848. Somaliland (Constitution) (Amendment) Order in Council 312
909. Town and Country Planning (Development Plans) (Scotland) Amendment Regulations 303
969. Ghana (Consequential Provisions) (Colonial Stock Acts) Order in Council 307
970. Ghana (Pending Appeals to Privy Council) Order in Council ... 307
1056. Sierra Leone (Constitution) (Amendment) Order in Council 310
1057. Sierra Leone Protectorate (Amendment) Order in Council 311
1058. Tanganyika (Legislative Council) (Amendment No. 2) Order in Council 314
1059. Tanganyika (Public Service Commission) Order in Council 314
1064. National Insurance (Switzerland) Order 409
1086. Aliens (Former Somali British Protected Persons) Direction 431
1159. Mental Health Review Tribunal Rules 419
1160. Mental Health (Powers of Inspection) Regulations 402
1178. National Health Service (Superannuation) (Amendment) Regulations 403
1209. National Health Service (Superannuation) (Scotland) Amendment Regulations 404
1226. National Insurance (Pensions, Existing Contributions) (Transitional) Amendment Regulations 409
1239. National Health Service (Superintendents of Mental Hospitals, etc.) Regulations 402
1240. National Health Service (Functions of Regional Hospital Boards, etc.) Amendment Regulations 402
1241. Mental Health (Hospital and Guardianship) Regulations 402
1270. National Insurance (Modification of the Superannuation Acts) Regulations 408

1272. Mental Health (Regulation and Inspection of Mental Nursing Homes) Regulations 403
1273. National Assistance (Registration of Homes) (Amendment) Regulations 403
1276. Kenya (Electoral Provisions) Order in Council 425
1282. National Insurance (General Benefit) Amendment Regulations ... 404
1283. National Insurance (Hospital In-Patients) Amendment Regulations 408
1284. National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations 410
1285. National Insurance (Contributions) Amendment (No. 2) Regulations 405
1286. National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations 405
1290. Nigeria (Constitution) (Amendment No. 2) Order in Council 426
1311. Acquisition of Land (Rate of Interest on Entry) Regulations 396
1312. Acquisition of Land (Rate of Interest on Entry) (Scotland) Regulations 396
1324. Valuation Appeals Procedure (Scotland) Order 400
1335. Tribunals and Inquiries (Air Transport Licensing Board) Order 419
1366. British Protectorates, Protected States and Protected Persons (Amendment) Order in Council 431
1367. British Solomon Islands (Constitution) Order in Council 422
1368. Republic of Cyprus Order in Council 423
1369. Sovereign Bases of Akrotiri and Dhekelia Order in Council 423
1372. North Borneo (Legislative Council) Order in Council 427
1373. Tanganyika Order in Council 432
1374. Tanganyika (Legislative Council) (Amendment No. 3) Order in Council 432
1395. Legal Aid (Scotland) (Assessment of Resources) Regulations 396
1471. Legal Aid (Assessment of Resources) Regulations 396
1472. Legal Aid (General) (Amendment No. 2) Regulations 396
1474. Caravan Sites (Licence Applications) Order 416
1475. Town and Country Planning (General) (Amendment) Regulations 416
1476. Town and Country Planning General Development (Amendment No. 2) Order 416
1539. Town and Country Planning (Building Preservation Order) (Amendment) Regulations 415
1554. Caravan Sites (Licence Applications) (Scotland) Order 416
1559. Legal Aid (Scotland) (Section 5) Amendment (No. 2) Regulations 396
1652. Nigeria (Constitution) Order in Council 426
1653. Nigeria (Retirement Benefits) Order in Council 426
1654. Southern Cameroons (Constitution) Order in Council 422
1655. Southern Cameroons Plebiscite Order in Council 422
1656. Northern Cameroons (Administration) Order in Council 423
1657. Northern Cameroons Plebiscite Order in Council 423
1658. Windward and Leeward Islands (Courts) (Amendment) Order in Council 434
1661. Judicial Committee (Opticians Rules) Order 419
1668. Tribunal and Inquiries (Finance Act Tribunal) Order 419
1722. Town and Country Planning (General Development) (Scotland) Amendment Order 417

TABLE OF CASES

[Only cases substantially discussed or reported are included]

Addis *v.* Crocker (1960) 104, 419
Al Baker *v.* Alford (1960) 301
Arbuckle, Smith & Co. *v.* Greenock Corporation (1960) 199
Att.-Gen. *v.* Harris (1960) 414
—— *v.* St. Ives R.D.C. (1959) ... 79
Auten *v.* Rayner (No. 2) 191

Barraclough *v.* Brown (1897) ... 15
Beetham *v.* Trinidad Cement (1960) 197
Belfast Corporation *v.* O. D. Cars (1960) 208
Benjamin *v.* Minister of Pensions and National Insurance (1960) 408
Black Bolt and Nut Association's Agreement, *Re* (1960) 401
Blanket Manufacturers' Association's Agreement, *Re* (1959) 85
Burton *v.* West Suffolk County Council (1960) 289
Buxton *v.* Minister of Housing and Local Government (1960) 418

Cameron *v.* Lord Advocate (1952) 12
Central Electricity Generating Board *v.* Jennaway (1959) ... 97
Ching Garage *v.* Chingford Corporation (1960) 77, 399
Commissioners of Crown Lands *v.* Page (1960) 397
Crowe *v.* Lloyd's British Testing Co. (1960) 199

Dingle *v.* Associated Newspapers (1960) 208
Director of Public Prosecutions *v.* Milbanke Tours (1960) 298
Dunn *v.* R. (1896) 10–12

East Ham Corporation *v.* Ministry of Housing and Local Government (1959) 78
Endacott, *Re* (1959) 80
Evans *v.* Roper (1960) 418

Federation of British Carpet Manufacturers' Agreement, *Re* (1960) 291
Federation of Wholesale and Multiple Bakers' (Great Britain and Northern Ireland) Agreement, *Re* (1960) 291
Felix *v.* General Dental Council (1960) 304
Fox *v.* General Medical Council (1960) 419

Harry Ferguson Research *v.* Dawkins (1960) 290
Hazeldine *v.* Ministry of Housing and Local Government (1959) 12–14, 80
Holloway *v.* Dover Corporation (1960) 285
Horwitz *v.* Rowson (1960) 418

Imperial Tobacco Co. *v.* Pierson (1960) 400
I. R. C. *v.* Australian Mutual Provident Society (1947) 9
—— *v.* Hambrook (1956) 10
—— *v.* Hinchy (1960) 132
Institute of Mechanical Engineers *v.* Cane (1960) 198

Kensington Borough Council *v.* Walters (1959) 81
Kensington North Parliamentary Election, *Re* (1960) 412

Lincoln *v.* Daniels (1960) 419
London Library *v.* Cane (1959) 79

Mitchell and Edon *v.* Ross (1959) 86
Mounsdon *v.* Weymouth and Melcombe Borough Council (1960) 212
Mungoni *v.* Att.-Gen. for Northern Rhodesia (1960) ... 195
Mwenya, *Ex p.* (1959) 162

National Association of British and Irish Millers, Ltd.'s Scheme, *Re* (1960) 202

Pasmore *v.* Oswaldtwistle U.D.C. (1898) 16
Patch *v.* United British Hospitals Board (1959) 85
Patterson *v.* Solomon (1960) ... 314
Peek *v.* Burley Golf Club (1960) 290
Phenol Producers' Agreement, *Re* (1960) 291, 401
Prescott *v.* Birmingham Corporation (1955) 138
Pyx Granite Co., Ltd. *v.* Ministry of Housing and Local Government (1960) 14–17

R. *v.* Agricultural Land Tribunal for the S.E. Area, *ex p.* Bracey (1960) 414
—— *v.* Barnsley Licensing Justices (1960) 414
—— *v.* Dorset Sessions Appeals Committee, *ex p.* Weymouth Corporation (1960) 302
—— *v.* Hurst (Judge Sir Donald), *ex p.* Smith (1960) 301
—— *v.* Liverpool Justices, *ex p.* Roberts (1960) 301
—— *v.* Medical Appeal Tribunal (North Midland Region), *ex p.* Hubble (1960) 102
—— *v.* Minister of Housing and Local Government, *ex p.* Chichester R.D.C. (1960) 302
—— *v.* Registrar of Building Societies (1960) 414
R. *v.* Smith (1960) 197
—— *v.* Woodbury Licensing Justices, *ex p.* Rouse (1960) ... 301
Riordan *v.* The War Office (1959) 9, 75
Roberts *v.* Hopwood (1925) 138
Routh Trustees *v.* Central Land Board (1960) 417

Scottish Association of Master Bakers' Agreement, *Re* (1959) 84
Société Franco-Tunisienne d'Armement-Tunis *v.* Government of Ceylon (1959) 8
Society of Medical Officers of Health *v.* Hope (1960) 199
Solicitor, *Re* A (1960) 304
Stephens *v.* Cuckfield R.D.C. (1960) 417
Sutton *v.* Sears (1959) 74

Taylor *v.* Munrow (1960) ... 140, 200

University of Ceylon *v.* Fernando (1960) 197

Walls *v.* Peak (1960) 290
Water-Tube Boilermakers' Association's Agreement, *Re* (1959) 85
Wexler *v.* Playle (1960) 198
Wilson *v.* Wrexham Corporation (1959) 77
Woodhouse, *Ex p.* (1960) 420

PUBLIC LAW

Spring, 1960

Comment

Those of us who are not economists—a category wide enough to include most of the readers of *Public Law*—are not well qualified to take sides in the controversy which surrounds the Report of the Committee on the Working of the Monetary System. The Radcliffe Report, as it is better known according to the British tradition of saddling chairmen with Short Titles, is a document of nearly a thousand paragraphs. Chapter III (on the financing of the public sector), Chapter VI (on the influence of monetary measures) and Chapter VII (on the management of the National Debt) contain much information and opinion of significance and interest to anyone concerned with the working of government.

The first three objectives of monetary policy summarised in the Report are a high and stable level of employment, reasonable stability of the internal purchasing power of money and steady economic growth and improvement of the standard of living. No special emphasis is needed to link these objectives with the sphere of law and government.

The current revolution in the size and nature of the responsibilities of the Central Government is revealed by the figures set out in paragraph 74. Taxes in 1938, 1948 and 1958 yielded £874m., £3,531m. and £5,288m. The comparable current expenditure on goods and services were £463m., £1,233m. and £2,591m. while grants to local authorities for those three years were £133m., £281m. and £639m. But the main concern of the Committee was with the flow of cash between the Government and other sectors of the economy (para. 76). Here the figures reflect the policy changes. Thus loans to nationalised industries and other public corporations fluctuated between £153m. in 1951–52 and £133m. in 1955–56; but in the three following years the totals were £759m., £1,045m. and £1,138m. This change derives from the Finance Act, 1956, which empowered the Treasury to make advances of long-term capital in the place of stock issues made by the corporations. So also with the capital requirements of local authorities where the most significant figures are those

showing the decline in borrowing from the Central Government, the increase in stock issues by the authorities and the increase in mortgages and other borrowings from £22m. in 1951 to £376m. in 1958. These changes reflect the policy decisions of the Government which resulted in three periods. From 1945 to 1952, the approved capital needs of local authorities were financed mainly by the Exchequer through the Public Works Loan Board. From 1953 to October 1955, authorities could borrow either from that Board or by stock issues or mortgages; in this period stock issues declined from £17m. to £1m., mortgages from £139m. (1953) and £193m. (1954) to £49m. (1955) and Exchequer borrowing rose from £328m. (1953) and £260m. (1954) to £414m. (1955). After October 1955, authorities have been allowed to borrow from the Board, at a rate of interest slightly higher than the current yield on gilt-edged securities of similar length, only if they could show that they could not raise the money in the stock or mortgage markets. Access to the stock market is regulated by the Bank of England and a long queue of would-be borrowers has been created. As a result of this last decision, the Board lends only to the small authorities and the net borrowing from the Central Government dropped from the £414m. in 1955 to £−30m. in 1958 while mortgages and other borrowing jumped from £49m. in 1955 to £330m. in 1956, £351m. in 1957 and £376m. in 1958.

When the Committee looked at the influence of monetary measures in the 1950s, they came to certain conclusions which have caused much controversy. In Chapter VI, the Committee began by saying that monetary authorities could theoretically influence the total level of demand in two ways: first, by changing interest rates and, secondly, by changing the liquidity conditions of financial institutions, business firms and people generally so that those wanting money to spend find it more (or less) difficult to get than it was before. The Committee said that they had sought, without much success, for convincing evidence of the presence in recent years of the interest incentive effect. They proceeded to disagree with the argument that the supremely important factor was the supply of money. This, they said, was only part of the wider structure of liquidity in the economy. "The decision to spend depends upon liquidity in the broad sense, not upon immediate access to money. . . . The spending is not limited by the amount of money in existence; but it is related to the amount of money people think they can get hold of, whether by receipts of income (for instance, from sales), by disposal of capital assets or by borrowing."

How far these arguments are wholly sound in the private sector is, fortunately, outside our scope. But they have great relevance in the public sector. The pressure exerted in, say, a progressive local

education authority for the building of more schools is not diminished by an increase in interest rates. Nor is this merely because it is " other people's money " that is being spent, for members of local authorities are influenced both as councillors and as individuals by a prospective rise in the level of expenditure which they have to meet. The Committee said: " Representatives of the nationalised industries showed much the same independence of interest rate changes: although they have to take interest changes into account, the pace of their capital development seems to have been decided by availability of materials and labour or by administrative decision—by anything but the rate of interest. Similarly, the local authorities told us that their capital expenditures—largely on housing and education—are substantially set by social legislation, availability of physical resources, Government loans sanctions, etc." (para. 451). By stopping grant-aid, the Government has been able very greatly to reduce the amount of local authority house-building for " general needs." The local authorities could have continued to build—some have done so—by financing themselves wholly out of the rate-fund or by increasing the rents of existing, as well as newly built, houses. In this sense they could " get hold of " the money they wanted. If it is asked why more local authorities have not then continued to build, the answer is probably, in part, a fear of the unpopularity that would follow if rate-poundages or, even more, rents were increased.

Borrowing by nationalised industries and local authorities was further considered by the Committee in Chapter VII of the report. They recommended that the industries should continue to look to the Treasury to cover all their permanent requirements; and that the Exchequer should " stand ready to provide long-term capital through the Public Works Loan Board at the current gilt-edged rate (at the time of borrowing) for the relevant maturity, to any local authority that is not able or does not want to raise the money it requires in the market on its own credit at a comparable rate " (para. 596)—this would be a return to the second period mentioned above (1953 to October 1955). On November 26, 1959, the Chancellor of the Exchequer said that it seemed to him that the Committee had been influenced in its thinking by an analogy between these two cases—an analogy which he disputed: " The fundamental difference," he said, " is that while local authorities can pledge their revenues as security and have, in fact, a credit standing of their own, so that they can borrow in the market in their own names without the guarantee of the Treasury or anyone else, the nationalised industries were not, and are not able to do so, but had to rely on the Treasury guarantee." So the issues of stock for the nationalised industries were the equivalent of Government stock, both because of the guarantee and because

of their size, and the same techniques had to be applied. But local authorities found a great deal of money for themselves and this was a great help to the Exchequer. So the present arrangements were to stand. The debate showed clearly, however, that both sides of the House were concerned about one rather alarming aspect of present local authority borrowing: the great amount of borrowing on short term. The Government is to make another survey which will show the position in the spring of 1959 and is to arrange with local authorities that the information is both regular and up to date.

Finally, the Chancellor of the Exchequer considered the Committee's recommendations relating to the Bank of England. He agreed that it should be made perfectly clear that a change in the Bank Rate was in fact made with his approval but did not wish that this should be done by means of a statutory direction. The Chancellor outlined the procedure which would be followed, including a formal written proposal from the Governor and the Chancellor's formal written approval. The Committee recommended that a standing committee should be set up under the chairmanship of the Chancellor to keep under review and advise the authorities on all matters relating to the co-ordination of monetary policy as a whole. The Committee suggested that the standing committee might consist of the Economic Secretary to the Treasury (deputising for the Chancellor); the Governor, the Deputy Governor and two other representatives of the Bank; four representatives of the Treasury; and two of the Board of Trade. The Chancellor did not accept this recommendation and thought that a more continuous co-ordination of monetary policy could best be achieved by arranging for the Bank to be permanently represented on the various official committees by which economic policy was already formulated and advice to Ministers co-ordinated.

The argument continues. Mr. Harold Wilson, speaking for the Opposition, found the Chancellor's attitude to the Committee's report profoundly disappointing and thought it was clear that he had virtually rejected every recommendation in the report. Mr. Wilson said: " It is yet another case of the Government appointing a high-level committee to look into these questions, to spend quite a long time, in this case two-and-a-half years, saying: ' No. We cannot talk about monetary policy because we have this Committee,' and then, when the Committee produces its report, the Government say a few well-chosen words about it, reject its main conclusions and go on as before. There have been even more spectacular illustrations of that in the course of this year's history." Whether or not one agrees with that comment, the deliberations of the Committee, its report and official reactions to it, have helped to make more explicit the philosophy and

economic policy of our actual and potential rulers. Indeed, the Opposition liked the report so well and claimed so much of it as their own that the Committee's chairman may find his to be Arthur's epitaph: "Hic jacet Radcliffus. Rex quondam rexque futurus."

Interception: Partial and Impartial

Moral philosophers have recently been pointing out to each other the ways in which disagreement may be prolonged by the various possibilities of classifying in different ways exceptions to generally agreed rules. Some footnotes to this thesis might have been taken from the Commons' debates of December 1959 arising out of a disclosure to the General Medical Council of shorthand material recorded by Reading police in the course of an investigation which involved listening (with the consent of a subscriber) to a telephone conversation. On December 16, an Opposition motion of censure [1] regretted the failure of the Home Secretary to comply with the recommendations of the Birkett Committee [2] (a) that no telephone conversation should be intercepted without the Secretary of State's express warrant, and (b) that material obtained by interception should in no circumstances be made available to any body or person whatever outside the public service. All men of goodwill on both sides of the House accepted the Birkett principles. Material had certainly been passed to a body outside the public service. But were the words which passed from subscriber X to subscriber Y in this instance "intercepted"? The ministerial honour of Mr. Butler, Mr. Bevins and Sir Reginald Manningham-Buller rested squarely upon the proposition that they were not, and that there was a world of moral difference between what some members described as "full" and "partial" interception.

Degrees of conviction on the point seem, however, to have varied, as do the descriptions of the listening procedure actually used (it was variously described as having involved the subscriber's own telephone, an extension and "an exchange in a private block of flats"). On December 2, in answer to a question by Mr. Lipton, the Postmaster-General said "I do not think that there can be the smallest doubt but that the circumstances in this case were not covered by the general recommendation of the Privy Councillor's Report." [3] On the following day, answering a further series of

1 615 H.C. Deb., col. 1523 (unrevised).

2 Cmnd. 283 (1957). Report of the Committee of Privy Councillors appointed to inquire into the interception of communications. See (1958) *Public Law*, pp. 8, 71.

3 614 H.C. Deb., col. 1184.

questions the Home Secretary thought that case was "not on all fours with an interception of the public system" and on the 16th, when the censure motion was debated, there was in Mr. Butler's view "the clearest possible distinction," and to say that the case was "on all fours with the Birkett Committee (was) a travesty of common sense."[4] On the other hand, in Mr. Fletcher's opinion "Nobody reading the Report of the Birkett Committee can doubt that the Committee was dealing with the whole category of cases of telephone interception by the police."[5] The Attorney-General, however, shared the view of his ministerial colleague. The Secretary of State, he argued, had no power to prevent a policeman from listening to a conversation at the request of, or with the consent of, a subscriber. If legislation were passed to ensure that a policeman could only do with the Home Secretary's consent what every other citizen was free to do without anyone's permission the telephone might well become an instrument of great benefit to the criminal classes.[6]

Mr. Patrick Gordon Walker (who as a member of the Birkett Committee had dissented from the majority finding) asserted that this was not a case of mere eavesdropping analogous to hiding behind a curtain with the consent of one party to a conversation. Telephone tapping was itself a form of eavesdropping. Only by an arbitrary line could eavesdropping in general be distinguished from interception and the place to draw the line if liberties were not to slip away was first at the point where the police came in and secondly where a telephone was concerned. This was not just somebody listening in on an extension: it was the police listening in. They instigated the conversation, secretly listened to it and recorded the words of a man who knew nothing about it. The Birkett Committee had sought to safeguard the rights of citizens against eavesdropping on the telephone. Here the police intercepted a conversation at the very point at which the telephone line entered into the public telephone system. If they had gone one stage further along the line they would have been at a public telephone exchange. Simply by finding the right place on the line rather than a public exchange at which to make the interception, apparently any policeman could intercept any conversation at his own discretion. The argument between the Opposition and the Home Secretary was not whether the police should have the sort of power used in this case but whether it should be used by them "off their own bat."[7]

[4] 615 H.C. Deb., col. 1536.
[5] 615 H.C. Deb., col. 1585.
[6] 615 H.C. Deb., col. 1597.
[7] 615 H.C. Deb., col. 1523.

Mr. Butler in fact conceded under the earlier questioning on December 3, that he would prefer to see police investigations of the kind here in issue done by "normal intercept with the authority of the Secretary of State." [8] He insisted, however, that by "a fundamental principle of our constitution, a Minister of the Crown has no power to intervene in the day to day operations of the police and in particular in their methods of detecting criminals . . . and otherwise conducting criminal investigations." [9] Either this objection cannot be taken seriously or it is an objection which equally prevents the Home Secretary from being in a position to fulfil the obligations in relation to "tapping" by local police authorities in its accepted sense under the Birkett Committee's recommendations.

Clearly the Birkett Committee's unqualified recommendation against disclosure to outside bodies of intercepted material clashes with the existing and proposed powers of subpoenaing evidence exercised by domestic tribunals which the Simonds Committee is currently considering. Those powers bring into question the desirability of a new head of Crown privilege which the Home Secretary, despite the disapproval of *The Times*, properly in this case refused to create when faced with the General Medical Council's subpoena. (The Attorney-General remarked in the debate that he would have advised the use of Crown privilege to withhold the transcript if true interceptions under the Secretary of State's warrant had been in question, apparently on the ground that one of the existing heads of privilege—secrecy necessary for the proper functioning of the public services—would in that event be adducible. This might be argued.)

Meanwhile, and contrary to some expressed opinion, it seems right that the Opposition and the Commons should have used up much of the December debate on the issue of definition. The House has not previously had a full opportunity of debating the question of principle which divided the Birkett Committee. Besides sharing the Holmeseian aversion to the State's playing an ignoble part it is useful to know precisely in what ignobility consists. Much of the expressed disagreement about the status of the police activity under discussion turned upon the moral to be drawn from the consent of one party to the interception. What is the value of this consent in relation to the admitted evils portrayed by the Birkett Committee? May it not be induced in various ways, some undesirable? May it be withdrawn after the transcript is made? Suppose that consent were given by a subscriber to an outside tap on all incoming calls. How many evils of secret interception would this exorcise? Is it a moral

[8] 614 H.C. Deb., col. 1388.
[9] 615 H.C. Deb., col. 1538.

truism or a simple falsehood that "*Every* citizen who uses any means of communication provided by the State should have an absolute assurance that his communication, his talks or his letters should not be deliberately intercepted by an agent of the State without a warrant." [10]

G. M.

Natural Justice and the Courts

We have long passed the era when it was generally fashionable to ridicule the idea that natural justice could be a meaningful concept in law. It is still true, however, that the concept is most often used in connection with the control exercised by courts over the proceedings of tribunals. In this field it has been most fruitful; but its fertility is not exhausted. The phrase "natural justice" is more than a name for a few specific principles of procedure which have to be observed by tribunals. It is a "living thought," and the courts have witnessed a new growth.

In *Société Franco-Tunisienne d'Armement-Tunis* v. *Government of Ceylon* ([1959] 3 All E.R. 25) a dispute arose between shipowners and charterers. The charterparty contained an arbitration clause which permitted disputes to be settled by an umpire deciding on submissions put to him on behalf of the shipowners and charterers by arbitrators they had appointed. With regard to one issue relating to demurrage the umpire applied a legal rule which he had derived from "remarks of Parker L.J. in *North River Freighters, Ltd.* v. *H.E. The President of India.*" The Court of Appeal found that in fact he had not raised the point of the existence and applicability of the rule with the two arbitrators. It could not be set aside for error of law apparent on its face. The award was not a "speaking order" so far as this aspect of the case was concerned. But though he had not set out his reasoning on this point in the award he had sent to the arbitrators "certain notes, expressly stated not to be part of his award, in order to explain to them how he reached his decision." In these notes there appeared a mode of reasoning which was justified by the umpire's view of the *North River Freighters* case, though the case was not referred to. The shipowners stated that this reasoning had never been considered by their arbitrator. Later the umpire in an affidavit specifically based his reasoning on the remarks of Parker L.J. The shipowners' arbitrator stated in an affidavit that had the umpire's contention been drawn to his attention he would have submitted an argument to show that the remarks of Parker L.J. were no answer to the shipowners' claim for demurrage.

[10] 615 H.C. Deb., col. 1526 (Mr. Gordon Walker).

The umpire's award was set aside on the ground that he could not decide on the basis of a rule of law which had not been considered by the parties. Morris L.J. said the proceedings were unsatisfactory because the parties should have had an opportunity to make submissions on the point taken by the umpire. Pilcher J. thought it was the umpire's duty to bring the matter clearly to the minds of the arbitrators, and he characterised the situation as one where " the proceedings before the umpire were not conducted in accordance with the principles of natural justice."

It has always been thought that the principles of natural justice did not require tribunals to conform precisely to the procedure of a court of law. It has been assumed that the procedure in a court of law provided more extensive safeguards to ensure that justice was done than were strictly required by natural justice; after all, in courts of law justice must not only be done but manifestly appear to be done. The present decision appears, however, to require umpires to conform to standards which are not always observed by judges. One has on occasions heard of judges deciding cases on the basis of a legal doctrine which had not been raised in the course of argument. The justification for such judicial decision is that judges ought to decide in accordance with the law of the land, and not be mere " umpires " deciding only on the contentions addressed to them by the parties.[11] It may well be that the ruling in the present case will be limited to arbitration proceedings before an umpire who is appointed to decide between submissions made by arbitrators. On the other hand, the principle of natural justice does not appear to be so limited. It will be interesting to see if it is applied to other tribunals than those of the commercial umpire.

J. L. MONTROSE.

CROWN SERVICE AGAIN

The moral philosophers may derive satisfaction from *Riordan* v. *The War Office*,[12] for it demonstrates the durability of the quality of hopefulness even in the face of constant adversity. The lawyers can hardly derive the same feeling from that case. For to them it demonstrates once again, with an air of inevitability, the triumph of experience (in the guise of precedent) over hope. An unsatisfactory rule of law of dubious origin has been preserved intact,

[11] Lord Denning has recently regretted the action of the House of Lords in *Inland Revenue Commissioners* v. *Australian Mutual Provident Society* [1947] A.C. 605, where Viscount Simon, *arguendo*, himself raised a point not submitted by counsel, and not accepted by the party favoured by it. The speeches accepted as law the rule thus suggested by their Lordships. It will be noted, however, that the point was raised by their Lordships in argument, not introduced into the case for the first time in the opinions.

[12] [1959] 1 W.L.R. 1046.

and the lawyers must derive what satisfaction they can from that preservation.

Mr. Riordan was an unestablished civilian employee at a War Department Depot, he was evidently not very senior in the hierarchy, and, trouble having arisen between himself and his immediate superior, he handed in his resignation. This had faults of form, but nevertheless made its intention sufficiently clear. These events happened late on a Friday afternoon, and, as it happened, the Commanding Officer of the Depot was then away, but the resignation went straight through the proper channels to his desk. Just under an hour after handing in his resignation, but after it had reached the desk, Mr. Riordan attempted to withdraw it. The Commanding Officer officially accepted the resignation on the following Monday, and, it having been acted on, Mr. Riordan now raised his action for damages for wrongful dismissal. There were regulations governing such civilian employees which required that all, on entering employment, should sign a declaration that they understood that they would be employed under the regulations. The latter laid down that resignation required a week's notice, discharge required a fortnight's notice. The case of casual employees was distinguished throughout. In particular they were to be informed that their employment was liable to be terminated without notice. The reasonable interpretation of all these regulations was summarised by Diplock J. in the words: "These regulations seem to me to purport to lay down virtually binding terms of employment between the Crown and the employee, to which the consent of the employee has to be obtained on his entering into the service of the Crown." Yet, relying on *Dunn* v. *R.*,[13] the learned judge was forced to conclude—"such a provision purporting to exclude the Crown's power to terminate services at pleasure, if purporting to be made by way of contract as distinct from statute, was ruled against as *ultra vires* and so void." Therefore the plaintiff had no cause of action.

There is no point in rehearsing here the arguments about the weight of these earlier authorities [14]; for, even if these authorities are accepted as binding, a more general point is obliquely raised by the present case. Some of the other recent cases involving different aspects of Crown service had suggested that there were grounds for hoping that the law was not absolutely rigid. There were signs of loosening, at least in relation to accrued pay, in *I. R. C.* v. *Hambrook*.[15] These signs were largely in *obiter dicta* and it is true that

[13] [1896] 1 Q.B. 116.

[14] See, *inter alia*, the discussion in my *The Contracts of Public Authorities*, pp. 32–52.

[15] [1956] 2 Q.B. 641, 654.

the rules about dismissal tended to be reaffirmed at the same time. In addition to the cases, legislation, such as the Maintenance Orders Act, 1958, reinforced the feeling that a spirit of realism was having a beneficent effect upon the law. In relation to other conditions of employment of crown servants the spirit of hopefulness did not, then, appear to be mere groundless euphoria, and there was even hope that the revisionist spirit might, in time, affect the dismissal rules. Those rules, such as they are, were worked out against a background of fact and opinion materially different from that which exists today. They were moreover worked out, in the first place, in relation to relatively senior persons, medical officers, consular agents and the like. The employment of such persons may conceivably require to be governed by special rules, and in any event such persons, while not being lawyers, may have sufficient knowledge of the ways of officialdom to have a healthy distrust of its forms. The rules have, in later cases, been applied to inferior servants, but in relation to them the cases are not so strong; there are grounds for differentiation, and in relation to such servants there is a particular need for the law to correspond with appearances. If at first sight there is to one of Her Majesty's judges an agreement which is mutually binding, it is reasonable that a labourer or clerk in a War Department should believe that that is what he has got, and resentment on discovering that things are not as he thought is understandable.

Governments, no less than citizens, should turn square corners, and there appear to be two possible courses. If it is intended to use this absolute power of dismissal when it is found to be administratively convenient then the present elaborate sham should be abandoned. There is no justification for requiring a signature to documents the effect of which must be to create a false impression in the mind of the signatory. It is relevant to notice that here, although there was (as Diplock J. found) a perfectly good defence to the action based upon the letter of resignation, the primary defence put forward was that of this absolute and inalienable right of dismissal at will. If, however, it is not the intention so to use that rule then the rule itself should be looked at, in exactly the same way as other related rules have been in recent years by the courts or by Parliament. If the rule is accepted as finally established in law, and if the doubts which Diplock J. emphasised, as to whether the Crown could of its own volition do anything to mitigate the rule, are also accepted, then a re-examination of its working becomes all the more necessary. Those doubts mean that even if there were an intent to accept as true the position which the forms would lead any ordinary person to believe in, that intent must be vain and is bound, in law, to be frustrated; a position which is scarcely

satisfactory. In such circumstances it may appear that there is little that the courts can do and all must await unhurried legislation. Yet, leaving aside the possibility that on re-examination the primary rule and the rider which is incorporated in the doubts might be found to be not as firmly established as is sometimes thought, the courts are not without influence. The Crown Proceedings Act, 1947, owes much to judicial criticism of the state of the law (admittedly there it was somewhat easier to make that criticism felt). Observations such as those of Collingwood J. in *Boon* v. *Boon* [16] may eventually have an effect on the Statute Book.[17] It is true that in cases such as the last the particular rule of law which was involved did obstruct the course of justice, whereas in the present case as in many of the cases where it has apparently been accepted, the plaintiff would have failed in his action quite apart from the operation of this dismissal rule. That, however, does not mean that the rule is harmless; it is capable of working injustice in circumstances such as those disclosed in *Cameron* v. *Lord Advocate*.[18] That it is not administratively necessary is demonstrated by the terms of the instruction and forms disclosed in the present case, which also emphasises the misunderstandings to which its continued existence can give rise. None of the reported cases indicates any real necessity for continuing it, for in none would any difficulty have arisen had the rule not existed. In such circumstances one might hope that at least higher courts which are not technically bound by *Dunn* v. *R.*[19] (the one authority which Diplock J. picked out as being directly in point and binding upon him) might either seriously re-examine the proposition or protest against the continuance of misleading practices. For such protests there are many precedents in other branches of the law. The present decision cannot itself be criticised, its facts only call for comment since they emphasise an unsatisfactory state of affairs, in which, at best, public authorities are against their will placed in a position when they can only hold out false hopes. This is one of the occasions when practical effect might be given to some of Dicey's principles which are most often extolled.

J. D. B. Mitchell.

Compulsory Purchase for Police Housing

An attempt to construe narrowly the "functions" of a police authority under the Police Act, 1946, as comprising official duties

[16] [1952] P. 114, 118.
[17] *e.g.*, the Air Force Act, 1955, ss. 185 and 203 (as amended by the Maintenance Orders Act, 1958, s. 14).
[18] 1952 S.C. 165.
[19] [1896] 1 Q.B. 116.

only was resisted by the Court of Appeal in *Hazeldine* v. *Minister of Housing and Local Government*.[20] The Court of Appeal might have recalled that the word " functions " is defined for the purposes of the Local Government Act, 1929, as including " powers and duties," but, in effect, the court did similarly interpret the same word in the Police Act.

In 1957, the Cheshire police authority made a compulsory order to purchase land adjoining a divisional police headquarters to provide houses for police officers. The police authority purported to act under section 15 of the Police Act, 1946, which authorised them to make a compulsory purchase order for land " which is required for the purpose of any of the functions of the police authority. . . ." At the public inquiry, objectors did not dispute evidence that it was necessary for police officers to have houses reasonably near their work in order to provide an efficient police service, but contended that section 15 did not entitle the police authority to make a compulsory purchase order to provide such houses. After the Minister confirmed the police authority's order, the objectors applied to the court under the Acquisition of Land (Authorisation Procedure) Act, 1946, Sched. I, para. 15,[21] but Lord Parker C.J. dismissed the application,[22] and the Court of Appeal affirmed the Lord Chief Justice's decision.

The objectors had argued before Lord Parker that the word " functions " in the Act meant official duties, something that was laid upon the authority by Parliament. They urged that, whereas the duty was imposed on them to provide police stations and equipment, there was no statutory duty on them to provide houses. The other argument pressed by the objectors was to contrast the Police Act where there is no express reference to housing for the police with the Metropolitan Police Act, 1886, and the Fire Brigades Act, 1938. The Metropolitan Police Act expressly gives the police receiver power to acquire land for houses, and under the Fire Brigades Act the fire authority has power to provide housing accommodation for members of fire brigades and to acquire land compulsorily for the purposes of its " functions " under the Act. Since " functions " clearly includes " powers " in the Fire Brigades Act, this argument seems inconsistent with the first argument of the objectors.

The Court of Appeal refused to adopt a restrictive attitude towards section 15 of the Police Act. Both Hodson and Ormerod L.JJ. agreed that the statutory provision being one providing for the compulsory purchase of land should be construed strictly, but both

[20] [1959] 1 W.L.R. 1155.
[21] There is a misprint in the report.
[22] (1958) 172 E.G. 675.

declined to follow the very narrow construction of it advocated by the objectors. As Ormerod L.J. put it[23]:

> "The wording of the section enables the local authority to acquire land which is required for the purpose of any of the functions of the police authority. The function of the police authority is to provide and maintain an efficient police force, and for the provision and maintenance of an efficient police force it is essential that they should be adequately housed."

The Court of Appeal was clearly not impressed by the lack of any express power in the Police Act to provide housing accommodation for police officers. The effect of the decision is that the police authority has an implied power to do anything that assists the provision of an efficient police service: such is its "function."

The basis of the objectors' application to the High Court was Schedule I, paragraph 15, of the Acquisition of Land (Authorisation Procedure) Act. Under this provision, the only grounds of challenge are if the authority has acted *ultra vires*, or if any procedural requirement of the Act has not been complied with, or if the authority has been in breach of a rule of natural justice. The objectors could not complain that the evidence was insufficient to support the order or that the authority was not justified in making the order.[24]

GORDON BORRIE.

No Ouster of Jurisdiction

The House of Lords unanimously affirmed the hallowed principle that an individual's right of access to the courts is not to be excluded by statute except by clear words, in *Pyx Granite Co., Ltd.* v. *Ministry of Housing and Local Government*.[25]

In 1947 the appellant company applied to its local authority for planning permission to develop two areas for quarrying purposes. The Ministry "called in" the application for decision and the Minister decided to refuse permission to develop one area, and allow development on conditions in part of the other area only. The appellants, however, were of the opinion that development permission was not required in any case since development was authorised by a local Act of Parliament, the Malvern Hills Act, 1924. By the Town and Country Planning General Development Order, 1950 (made under the Town and Country Planning Act, 1947), general permission is given for development authorised by local Acts of

[23] [1959] 1 W.L.R. 1155, 1158–1159.
[24] *Re Bowman* [1932] 2 K.B. 621.
[25] [1959] 3 W.L.R. 346; [1959] 3 All E.R. 1.

Parliament. Therefore, the appellants sought a declaration in the High Court that they were entitled to carry out their proposed development without special permission. The substantive point is not of general interest, but the jurisdictional point at issue is of wider moment. The respondents argued that the High Court had no jurisdiction on the question of whether or not the company needed to apply for permission on the ground that such question was exclusively within the jurisdiction of the local planning authority and the Ministry under section 17 of the Town and Country Planning Act. By this provision, anyone who proposes to carry out operations on land and wishes to have it determined whether permission is required, may apply to the local planning authority to determine the question. The Ministry has power to "call in" the application for decision and by the combined effect of sections 15 and 17 of the Act, the Ministry's decision is "final."

The respondents backed up their argument by reference to the case of *Barraclough* v. *Brown*.[26] In that case, statute gave an aggrieved person the right in certain circumstances to recover certain costs and expenses from another person, who was not otherwise liable, in a court of summary jurisdiction. The House of Lords held that he could not recover such costs in the High Court. In the instant case, however, the House of Lords distinguished *Barraclough* v. *Brown*. Lord Jenkins referred to the principle of that case in these terms [27]:

> "Where a statute creates a new right which has no existence apart from the statute creating it, and the statute creating the right at the same time prescribes a particular method of enforcing it, then . . . the right and the remedy are given *uno flatu* and the one cannot be dissociated from the other."

Lord Simonds pointed out that in *Barraclough* v. *Brown* the right claimed by the plaintiff was a statutory one, so he had to follow the means of enforcing the right which statute laid down. By contrast, said Lord Simonds, the appellants in the instant case were given no new right of quarrying by the Town and Country Planning Act; their right was a common law right and the only question was how far it had been taken away. To quote Lord Jenkins again, the appellants were "not seeking to enforce statutory rights by methods other than those prescribed by the Act creating them. They are merely seeking to ascertain the extent of their statutory liabilities." [28]

[26] [1897] A.C. 615.
[27] [1959] 3 W.L.R. 346, 371.
[28] [1959] 3 W.L.R. 346, 372.

The question arises whether this distinction is justified. What were the rights and liabilities of the appellants in relation to the development of land? Surely they were rights and liabilities as defined by statute. The effect of the provisions in the Town and Country Planning Act regarding the general need for development permission and the particular exception provided by the General Development Order, 1950, is that a landowner today only has such rights to develop as statute permits. Lord Simonds spoke of the appellants' common law right of quarrying, but does not the present law amount to such common law rights having been replaced by the statutory right to develop only with permission or the authorisation of a local Act of Parliament? Statute has defined in new terms what rights of development a landowner has. The appellants were seeking in the High Court to ascertain the extent of their statutory rights and liabilities, or their common law rights as restricted by statute, although section 17 of the Town and Country Planning Act prescribed a specific particular remedy in such a case. There seems much to be said for the dissenting judgment of Hodson L.J. in the Court of Appeal, where he said [29]:

> " Planning is itself the creature of statute, and Parliament has provided its own method for the determination of the question here involved, *videlicet*, whether planning permission is required."

It is noteworthy too to recall the words of Lord Halsbury L.C. in *Pasmore* v. *Oswaldtwistle U. D. C.*[30]:

> " The principle that where a specific remedy is given by a statute it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law."

Can it be said that since section 17 merely says that a person " may " apply to the local planning authority, that indicates the remedy is alternative to other remedies? This does not seem sound; more likely the word " may " simply shows it is not compulsory on anyone to seek any determination of the question at issue. The House of Lords held, however, that the words of section 17 were not clear enough to oust the jurisdiction of the High Court.

It should be mentioned that by section 32 of the Town and Country Planning Act, 1959, decisions of a Minister under section 17 are now subject to appeal to the High Court on a point of law in the

[29] [1958] 1 Q.B. 554, 575.
[30] [1898] A.C. 387, 394.

manner provided by section 9 of the Tribunals and Inquiries Act, 1958. In spite of this provision, the House of Lords decision in the *Pyx Granite* case means that one can entirely by-pass the statutory prescription of recourse to the Minister and (now) appeal on points of law to the High Court, by going to the High Court direct.

GORDON BORRIE.

[We have been asked to say that the views expressed by Mr. A. C. Macdonald in his article on the African Affairs Board in the *Winter 1959* issue of this quarterly were purely personal and did not necessarily represent those of the Nyasaland Government by whom he is employed as a Resident Magistrate.]

THE CASE AGAINST FEDERATION IN CENTRAL AFRICA

COLIN LEYS

SIR ROY WELENSKY once asked Dr. George MacLeod, a former Moderator of the Church of Scotland and the Chairman of its Committee on Central Africa, whether he was against federation "in principle." "No," replied Dr. MacLeod, "what I am against in principle is *your* Federation." This is indeed the heart of the matter. The case against federation in Central Africa is not a case against the federal principle of government for the three territories of Southern and Northern Rhodesia and Nyasaland, but against the political régime which has been established by means of this particular constitutional device. Equally, the "case against federation" is not necessarily a case for breaking up the Federation. It may be that dismemberment is now the only practicable means of ending the political régime which has been established in Central Africa but the *logical* conclusion of the case against federation is that the federal constitution needs drastic revision, not repeal.

The case against the régime is in essence a moral one. The régime is wrong because it rests on European supremacy and the denial to Africans of basic rights to which they aspire; moreover it is growing more, rather than less, repressive, because of the mutual interaction of European determination to remain supreme and African determination to end that supremacy. Britain's responsibility for this situation is greater than in the case of many other colonies. Northern Rhodesia and Nyasaland are Protectorates whose African inhabitants, through both their "traditional" and their new "nationalist" leaders, have consistently placed great reliance on the fact that Protectorate status was voluntarily accepted on their behalf by their chiefs in the 1890s, and have consistently opposed federation with Southern Rhodesia because they feared that it would subject them to white supremacy.

THE OBJECTS OF FEDERATION

To frame the "case against federation" in this way is historically well justified. The constitutional device of federation was adopted by the local European leadership in Central Africa not for its own

* The author is a Fellow of Balliol College, Oxford.

sake but as one better calculated to win acceptance by the British Government than the scheme for outright amalgamation of the two Rhodesias which had long been their aim; and they sought amalgamation with the prime object of placing Northern as well as Southern Rhodesia under local European control, and preventing it from being transferred to control by its African inhabitants. These objects of federation are of fundamental importance for understanding the régime which has developed since; the history of the drive for federation and the history of the régime established since 1953 are the continuous work of the same social forces.

The first proposals for amalgamation of the two Rhodesias (made by the British South Africa Company's administration in 1915) were rejected by the Europeans in Southern Rhodesia because Northern Rhodesia was regarded as a " Black Man's country " in which they could not hope to be able to rule independently. If they had to join any other territory, it should be the White South (the Union).[1] In a Referendum of 1922, however, they voted by a 2 : 1 majority for Responsible Government rather than join the Union as a fifth province, and became, somewhat anomalously, a " self-governing " colony, with an Assembly elected by a virtually all-white electorate and a cabinet responsible for all internal affairs, subject only to certain (ineffective) powers of imperial veto on " native policy." [2] From this new point of advantage, in effective control of an African population of some 900,000, Southern Rhodesia's 37,000 settlers were able to make a fresh appraisal of the merits of amalgamation with Northern Rhodesia when, in the mid-1920s, the immensely rich resources of the Copperbelt there were discovered and began to be developed. There remained considerable opposition to the idea among European artisans in Southern Rhodesia. From 1924 Northern Rhodesia came under a Crown Colony form of government, responsible to the Secretary of State, and its policies were regarded as " pro-native " and out of sympathy with the ideals of the industrial colour bar and strict racial segregation which at this time were frankly held to be essential features of a " White Man's country." Much the same views were, however, also held by the growing European population of Northern Rhodesia (who numbered 13,800 by 1931); and it was from their leaders, increasingly fearful of African political advance, that a more and more intense pressure for amalgamation was now to come. Before 1930 their feeling of insecurity was not urgent. Although in a minority on the

[1] See the debate in the Southern Rhodesian *Hansard*, April 25–26, 1917.

[2] This status remains to this day in respect of the Southern Rhodesian Government within the Federation. For details, see Colin Leys, *European Politics in Southern Rhodesia* (Oxford, 1959), pp. 37–41.

Legislative Council, they elected seven out of its seventeen members; Africans had none, and a grant of Responsible Government on the Southern Rhodesian pattern was widely talked of as a likely development in the future. But there was also discussion of amalgamation; the visiting Hilton Young Commission in 1928 was told of a widespread fear that "the natives will eventually be able to rule the country," [3] and there were even unofficial discussions with the Southern Rhodesian Government, which agreed to a scheme for amalgamation offering strong inducements to the Northern Rhodesian Europeans.[4] In the background was the Devonshire Declaration of 1923 (in respect of Kenya, but with obvious wider implications) that, in case of conflict, the interests of the native population, not those of the immigrants, must be "paramount." And what finally precipitated the demand for amalgamation, and led directly to federation in 1953, was the re-assertion of this doctrine in 1930 by Lord Passfield (Sidney Webb), the Labour Colonial Secretary, with specific application to Northern Rhodesia as well.[5] In the 1935 elections all the "unofficial" members of the Legislative Council were pledged to work for amalgamation. A conference between them and leaders of all the European parties in Southern Rhodesia was held in 1936. Agreement in favour of amalgamation was unanimous, and the only reason why nothing further came of this particular initiative was that the Labour Party in Southern Rhodesia, representing the white artisan, wished the basis of amalgamation to be made unequivocally one in which there would be no constitutional restraint whatever on the amalgamated government's control of "native policy." [6] This was a condition which the British Government could not accept in the increasingly sensitive climate of public opinion on these matters; the same factor also governed the finding of the Bledisloe Commission [7] in 1939, which was that the idea of amalgamation should be accepted "in principle," but not implemented until "native policies" north and south of the Zambesi should be less dissimilar—a compromise which unhappily obscured the fact that the dissimilarity of native policies was what inspired the demand for amalgamation.

After a lull during the war, the campaign for amalgamation was renewed, especially after 1948, with a new and ultimately irresistible

[3] Cmd. 3234: evidence of Mr. P. F. Ellis in minutes of evidence in the Colonial Office library.

[4] The Northern Rhodesian negotiators were Capt. Murry and Mr. Stirke; details of the agreement are given in S. H. Veats, "The Rhodesias and Amalgamation," *The Nineteenth Century* (September 1938), pp. 316–317.

[5] Cmd. 3573.

[6] The formula was "complete self-government."

[7] Cmd. 5949: the Commission was also influenced by the strength of opposition to amalgamation which was expressed by African witnesses in both Northern Rhodesia and Nyasaland.

intensity. There were six principal reasons for this. *First*, African political consciousness throughout Africa, and no less in Northern Rhodesia and Nyasaland, was enormously stimulated by war service and by other wartime events. The Congresses were formed, and the Northern Rhodesian African Mineworkers' Union.[8] Elsewhere, especially in West Africa, British policy clearly began to point to African self-government, and in 1948 the first two Africans were added to the Northern Rhodesian Legislative Council. These changes aroused new and acute European fears for the permanence of white control. *Second*, the composition of the Northern Rhodesian European population had been changing, especially during the war when 60 per cent. of white immigrants were from South Africa, many of them Afrikaners from the Rand. These newcomers cherished South African ideals of government and readily supported the trade unionist Mr. (now Sir Roy) Welensky when in 1947 he resigned from the Executive Council, of which he was an unofficial member, to concentrate entirely on a campaign for amalgamation. *Third*, in 1948 Dr. Malan won the South African election. This led to a reaction against the Union among Southern Rhodesian Europeans, over 80 per cent. of whom are English-speaking. Taking advantage of this the Prime Minister, Sir Godfrey Huggins (now Lord Malvern), held an election in which the old Labour Party was eliminated; while the opposition "Liberal Party," which stood for "Dominion Status first" —*i.e.*, complete freedom to enforce a fully segregationist policy as pre-condition of any union with the North—was reduced to a small minority. The way was now clear for a concerted drive with the Northern Rhodesian Europeans for amalgamation on the basis of a constitution such as Southern Rhodesia already possessed and which, as Huggins had good reason to know, in fact imposed no effective restrictions of any kind on "native policy"; indeed the 1930s had seen a series of major discriminatory laws added to her Statute Book.[9] *Fourth*, Southern Rhodesians themselves were influenced by the rate of African advance elsewhere in Africa. Amalgamation with Northern Rhodesia appeared to offer control over an important *cordon sanitaire*. Huggins declared: "We do not want our grandchildren to have as a neighbour a state such as Liberia, which has no European guidance." *Fifth*, Southern Rhodesia was running short of the development funds needed to sustain—with housing, urban roads, schools, hospitals, etc.—the rate of European immigration which for political reasons it was dangerous

[8] The Nyasaland Congress in 1943, the Northern Rhodesian Congress and the Mineworkers' Union in 1948.

[9] Above all, the Land Apportionment Act, 1930, and the Industrial Conciliation Act, 1934.

to reduce.[10] There was uncertainty about the future supply of funds from the London market at the same time that revenue from taxes on copper production was beginning to run ahead of the Northern Rhodesian Government's capacity to spend. Economic logic thus reinforced the political logic of amalgamation for the European leaders of Southern Rhodesia. *Finally*, there was the important fact that both in the Northern Rhodesian Secretariat and in the Colonial Office the will to resist the demand for greater European control in Northern Rhodesia was weakening. This fact became of crucial importance when in 1951 a conference of officials met to explore the " practical questions " involved in federation; it was the unanimous report [11] of this body, comprising some of the British Government's chief advisers from the Colonial and Commonwealth Relations Offices, and the principal officials from all three territories in Central Africa, which finally swung the balance in favour of federation and formed the basis of its constitution.

The idea of " federation " had been substituted for " amalgamation " by Welensky and Huggins in 1949 at the suggestion of Col. Stanley, the former Conservative Colonial Secretary, after it had been made plain that neither British Party could be induced to support amalgamation; Mr. Creech Jones, the Labour Colonial Secretary, responded coolly to the change, but in 1950 Huggins was able to persuade his successor, Mr. Griffiths, to agree to the exploratory conference of officials.

About the main motives of the " federationists " or " amalgamationists " the historical record is unambiguous. For them the main object of federation was to transfer power into local European hands out of the hands of the Colonial Office, which was not trusted to withhold it from the Africans. From their different points of view the members of the officials' conference were quite aware of this; and the interest of their report, which is the last of the historical events which need be dealt with here, lies in the arguments which they used, and which have since become orthodox, for holding that the transfer of power to the Europeans on the spot would be a good thing.

There were two main arguments. One was that all three territories would benefit economically from federation. If, therefore, federation on terms acceptable to the European leaders meant a transfer of power to them, this must be regarded as good on account of the economic advantages it would produce. This argument was stated

[10] For this economic motive, see Huggins, Whitehead and others in the debate in the Southern Rhodesian Assembly, *Hansard*, June 26–27, 1952; for the political motivation of immigration, see *ibid.* June 22 and July 13, 1955.

[11] Cmd. 8233.

in two brief paragraphs of the report and appears not to have been submitted to analysis by any qualified economist. The second argument was political; in veiled terms the officials declared that only by transferring power to the Europeans on the spot could the advance of *apartheid* into Central Africa be stemmed. From their analysis of a Comparative Survey of Native Policies [12] of the three territories the officials were able to point to scant evidence that in practice the Southern Rhodesian pattern of racial discrimination, from land apportionment through the industrial colour bar to the complete absence of African political representation,[13] differed fundamentally from *apartheid*. But they said, in effect, that there had been an important change of emphasis in Southern Rhodesian thinking about native policy; that strict segregation was no longer its keynote; and that in the ideal of " partnership," which had already replaced " paramountcy of African interests " as the motto of policy in Northern Rhodesia, there now existed common ground for the future development of native policies in all three territories.

The view that Southern Rhodesian policy was diverging from that of South Africa could be supported by showing that, unlike *apartheid*, it now accepted the permanence of African participation in the cash economy, and therefore in the towns.[14] The question which, however, the officials did not answer—indeed did not ask—was whether the change which had occurred was fundamental enough to imply a wholesale, if gradual, dismantling of the discriminatory apparatus of white supremacy; or whether the power which would be transferred to the Europeans would in fact be used to extend to the two protectorates, not perhaps *apartheid*, but white supremacy of an equally permanent variety. Why did the British officials, at any rate, not ask this question? The answer remains speculative. At bottom, however, there was by this time a growing realisation in Lusaka and Whitehall that Northern Rhodesia's 37,000 Europeans, with the constitutional power which they already possessed,[15] were already in effect in a position of negative control over British policy in Northern Rhodesia, and might soon use this power in order to win positive control. Federation would certainly avert any prospect

[12] Cmd. 8235.

[13] In 1951, with fewer than 1 per cent. of the nominally " common " roll Africans, the Southern Rhodesian Government responded to the pressure of European public opinion by more than doubling the means qualifications.

[14] The important legislation is the Native Urban Locations Act, 1944, and the Native Land Husbandry Act, 1950; these Acts recognise rather than cater for African integration into the urban economy.

[15] In 1951 there were twenty-three members of the Legislative Council of whom ten were European elected members, two were Africans and two were European unofficials nominated to represent African interests. In addition, there were four European unofficials on the Executive Council. One was a representative of African interests. When all four were unanimous, their will prevailed.

of a local "showdown" in Northern Rhodesia; and might, by removing the Europeans' sense of insecurity, and at the same time appealing to their idealism and sense of responsibility, make of the "partnership" concept a genuinely new force for African advance and racial conciliation. Whether or not thoughts such as these lay behind the officials' act of faith in staking everything on the as yet wholly unproved quality of the "new" ideals of the Rhodesian European community, an act of faith it certainly was. The forces which had brought the federation issue to a head certainly included European patriotism and idealism but the dominant motives of the federationists afforded slender grounds for optimism.

The Federal Constitution

The federal constitution provides for an unusually strong centre,[16] and by an extremely complex set of representative provisions makes well over three-quarters of the Federal Assembly dependent on the support of European votes. It also provides two "safeguards" against abuse of this large transfer of power: an African Affairs Board with power to "reserve" measures for the potential veto of the Colonial Secretary, and compulsory (automatic) reservation of certain legislation, in particular constitutional amendments and changes in the electoral law.

The process by which, after 1951, the final form of the constitution was arrived at, is sufficiently well known. In the course of it, African opposition to federation in the two protectorates became fully as intense as the pressure from Europeans in its favour. The extent and meaning of this opposition have often been disputed in the past. Perhaps, however, subsequent events have sufficiently testified to its wide scope and deepseated character, which are also borne out by the available evidence of anthropologists and in the contemporary records of the African district and provincial councils.[17] Probably few serious

[16] Examples of powers which are normally regional but in Central Africa went to the centre are higher education and health. This corresponded to the desire of Europeans for the transfer of as many powers as possible to the new federal government, which they would control, from the protectorate governments, which remained responsible to the Colonial Secretary. The matters left to the territories were in general those most closely affecting the "day-to-day" lives of the African inhabitants, and cover in effect the "backward" sector of economic and social life. One power widely coveted by Europeans for the federal government, and which will be demanded for it in 1960, is control of "law and order"—*i.e.*, of police—another function which is normally regarded as regional in non-authoritarian federations. For details of the federal constitution, see Leys, *op. cit.*, pp. 41–50, and for the control of the Assembly, *ibid.* pp. 234–240.

[17] See, especially, W. Watson, *Tribal Cohesion in a Money Economy* (Manchester, 1958), Chap. 6, and also the *Proceedings* of the African Representative Council of Northern Rhodesia for September 12, 1951.

students will be found now to minimise the extent of African feeling on this issue.

The transfer of power to the Europeans was thus real and substantial; the " safeguards " were an unknown quantity which, if the ideals of the officials' original report were realised, would never need to be put to the test. African opposition in the protectorates, on the other hand, was virtually universal and bitter. Unless, therefore, " partnership " proved to be a principle of immense potency for reform and reconciliation the stage was set for a vicious interaction of European authority and African opposition, which could quickly deteriorate into a repressive system of white dominance differing from the *baasskap* of South Africa only in name. The case against federation is that this is what has happened.

European-Controlled Government Since 1953

Policy since 1953 has proceeded under three main heads. The first is economic, the second is concerned with interpreting " partnership " and the third is the suppression of African extra-constitutional opposition.

Economic development—in the sense of investment and growth in the national income—has been prodigious. It is, however, not possible confidently to ascribe this growth to federation. It is largely due to a very high rate of capital inflow into the country and continues a trend which was equally striking before 1953. It is arguable that (a) the larger reserves of the federal government, (b) the familiarity of American investors (of whom there are as yet relatively few, however, outside the long-established Rhodesian Selection Trust) with the federal form of government, and (c) the certainty of white control (" stable government ") have promoted growth by promoting investors' confidence. These factors are virtually impossible to assess; it is also arguable that if the price of federation is unrest and government by repression, they become extremely ambivalent. More substantial are two further arguments: that federation unifies the regulations applying to industry throughout the three territories, and that it also guarantees potential investors a domestic market which will not be carved up by the future imposition of tariff barriers. It is also argued that Nyasaland, in particular, is a net beneficiary to the extent of a sum currently reckoned at about £3½ millions' worth of revenue, enabling the government to provide services which would otherwise have had to be financed, if they could have been undertaken at all, from other sources outside the territory. Yet all these arguments are far from conclusive. If a factory is built in Salisbury (Southern Rhodesia) because of confidence that its products will never need to

pay duty to enter Nyasaland, Nyasaland loses both factory and tariff revenue. Moreover, since it is the federal government's policy to protect infant industries, Nyasalanders are in many cases paying a higher price for the products of new industries anyway, while the industries go to Southern Rhodesia where the "external economies" are greatest. It is the same with the revenue argument. Even if one could be sure—as one cannot—that the Nyasaland Government would today have been £3½ millions per annum poorer had federation not taken place, it does not follow that only the existing federation could have brought about this gain. Southern Rhodesia has also been a net gainer.[18] The funds have come from Northern Rhodesia, with which Nyasaland alone might have been linked with few of the difficulties and risks inherent in the federation actually brought into being. The truth is that the usual "economic argument" is a highly uncertain one. "The Federation exists, economic development has taken place, therefore federation has produced economic development" is too often the form in which it is cast. There is, however, another, perhaps less palatable, economic belief, which does clearly argue in favour of the existing régime; this is the view that without European supremacy, economic development would not take place because only the Europeans are motivated and qualified to plan and supervise it. For all its Stalinist undertones, this seems likely to become the main argument in favour of endorsing federation in 1960 [19]; the reason for this lies in the now patent failure of "partnership" as interpreted by the Europeans of Central Africa.

This has two chief aspects—the colour bar and the representative system. In all three territories there have been extensive reforms in the colour bar. By contrast with South Africa, numbers of jobs formerly reserved for Europeans have been opened to members of any race, in the copper mines, in the civil services and in a number of private enterprises. In Southern Rhodesia a new Industrial Conciliation Act (1959) makes possible multi-racial trade unions and industrial agreements. Leasehold home ownership in most of the main towns has been made available to Africans. There is no colour bar in Central African Airways, nor colour discrimination by class on trains or road services (although it remains in urban buses, and within each class on trains). Post offices no longer have separate entrances, "European" beers and wines can now be drunk by all races, who may also take part in the Southern Rhodesian lottery and bet on horse races. There is a multi-racial University College. There are two multi-racial cinemas. The list could be made much longer,

[18] This is based on a forthcoming analysis of the Nyasaland economy in relation to federation by A. D. Hazlewood and P. D. Henderson.

[19] See below, pp. 31–32.

although the more important changes have been mentioned. The changes in the representative system are harder to summarise, being of a complexity probably without any contemporary parallel.[20] But there has been an increase in both the number of African voters on the registers and the number of African members in the legislatures.[21]

Why have all these changes not been sufficient to prevent the political deterioration which has occurred? It is because they are too superficial, too unreal and too permanent, when they needed to be fundamental, genuine and transitional.

This point can be illustrated only briefly. In the matter of land apportionment, it has been made clear that no fundamental change is contemplated in Southern Rhodesia, where 50 per cent. of the total area is reserved for the European minority. Security of urban leasehold tenure for the few thousand Africans who can afford to buy a lease makes little impression on land-hungry masses in the Reserves. The case of " job advancement " is similar. The number of Africans affected is too small (*e.g.*, 900 jobs thrown open for a total Copperbelt African labour force of 37,000) and offers too narrow a prospect of progress to reconcile the mass of workers. The " unreality " of some of the most important of the changes is best illustrated from the Industrial Conciliation Act and from the franchises. The Act appears to place all workers on a new footing of trade union equality. But in fact it provides for regulation of trade union constitutions in a way which, the Government has made clear,[22] will secure control over the unions for their " skilled members "—*i.e.*, for their European members—however much of a minority they may become. The franchises have caused even greater disillusionment. The means and education qualifications place a full vote within the reach of virtually every European, no matter how humble, but well out of the reach of all but a mere handful of Africans. The numbers of African voters have risen; yet they form, even now, only some 7 per cent. of the Federal, 3 per cent. of the Southern Rhodesian and 25 per cent. of the Northern Rhodesian electorates; and even these Federal and Northern Rhodesian figures much exaggerate their real influence because the

[20] The details for Southern Rhodesia and the Federation are given in Leys, *op. cit.*, pp. 229–240, and for Northern Rhodesia in Cmnd. 530; *Northern Rhodesia, Proposals for Constitutional Change* (presented to Parliament in September 1958).

[21] In May 1959, 1,707 " ordinary " (*i.e.*, full) African voters and 4,877 " special " African voters (*i.e.*, voters entitled to vote for only a quarter of the seats) were on the Federal roll. On the Southern Rhodesian territorial roll in January 1958 there were 1,696 Africans (all with full votes). On the Northern Rhodesian roll in March 1959 there were 796 " ordinary " and 6,812 " special " African voters (the " special " vote was more valuable in Northern Rhodesian territorial elections than in federal elections owing to a slightly more generous allocation of " special " seats).

[22] See a speech by the Chief Industrial Officer reported in *Dissent*, October 22, 1959 (in respect of sections 46–48 of the new Act).

great majority of Africans have " special " votes only, of very limited value. In fact, of the twelve African members in the Federal and nine in the Northern Rhodesian legislatures in 1959, eight and three respectively were dependent on European votes or nomination.[23] Finally, there is the question of permanence. It is often argued that all the changes which have taken place should be regarded as only a first instalment, an earnest of the promise rather than the fruits of " partnership." But this view is not supported by the facts, and runs counter to the trend of events since 1953. The franchise changes were certainly intended to be permanent.[24] Further progress is looked for purely through African economic and social advance, which is admittedly not expected to produce more than a small African minority among the full voters for the " foreseeable future." Similarly, in Land Apportionment and Industrial Conciliation, the changes made are seen as setting a final legal pattern, further progress being left to individual attainment of wealth and skills (and to European willingness to honour the spirit as well as the letter of the law).[25]

The reason for these shortcomings is fundamental. The changes are the most which a majority of Europeans could be induced to support, and more than is acceptable to a substantial minority. Support for somewhat more liberal Southern Rhodesian franchise changes cost Mr. Todd his Premiership, and finally his seat in the Assembly and the seats of all the M.P.s who continued to support him. With the collapse of European Liberalism as a political force has gone the rise of the Dominion Party, standing for frank European supremacy and the consolidation of a unitary " white Dominion " of Southern Rhodesia plus the Copperbelt, which would retain general suzerainty over the remaining areas of Central Africa as " African " protectorates.

Finally, in the face of this mounting European resistance to further change, the " safeguards " proved a broken reed. The African Affairs Board, making the first use of its powers of " reservation," reported that the federal franchise changes of 1958 [26] were discriminatory, reducing the effective power of Africans in the federal electorate. The British Government overruled the Board, having made a prior

[23] It is arguable that four of these, the African Federal M.P.s from Nyasaland, could have been returned on African votes if Nyasalanders had not determined to boycott the whole federal electoral system.

[24] See the federal government's resolutions on this point in the Federal *Hansard*, July 1, 1958.

[25] *e.g.*, the European mineworkers of Northern Rhodesia have so far not been willing to take on African apprentices under the provisions of a Northern Rhodesian Act which makes apprenticeship open to Africans (see Clyde Sanger, " Central Africa's Big Four," *The Guardian*, December 16, 1959).

[26] The Board also reported against the Constitution Amendment Act which accompanied the Electoral Act; see *Reports*, Fed.A.18 and Fed.A.23, presented to the Federal Assembly on July 30, 1957, and January 6, 1958, respectively.

agreement about the changes with Sir Roy Welensky.[27] This, in effect, destroyed African confidence in the Board, and since the 1958 elections a majority of its members have owed their seats to European votes and accept the Government whip.

Conflict of Ideas

African reactions to all these policies are best understood in terms of the conflict between their ideas and those of the European community. There is a single ideological thread running through the pattern of government policy since 1953. "Partnership" has been interpreted as meaning full legal and political equality for those Africans—not expected to be many for a long time to come—who can satisfy tests of "civilisation" (in practice, very high tests of wealth and education), subject to the overriding condition that political control must remain decisively in European hands for as far ahead as one can see. It is a variant, in fact, of the Belgian "*evolué*" and Portuguese "*assimilado*" policy, but with one important difference: most Europeans in Central Africa have, at least until the "emergencies" of 1959, believed that this policy should and would succeed in winning widespread African support.

This belief reflects a widespread and profound ignorance of Africans which segregation has imposed on the European population. Very few Europeans *know* any Africans, as acquaintances in the ordinary sense, and virtually none live among them.[28] Knowledge has had to be replaced by a stereotype, that of a population of ignorant and passive peasants, only distracted from a general contentment with the gradually improving elementary things of life in the villages by the "agitation" of an unrepresentative and self-seeking minority of half-educated city slickers in the Congresses. Very few Europeans have noticed or appreciated the significance of the process by which, with each fresh disillusionment with government policies, power in the Congresses has slipped further and further into the hands of the younger and more militant leaders (corresponding closely to the trend towards illiberalism in the European electorate). In the early life of the Federal Assembly the Nyasaland African M.P., Mr. W. M. Chirwa, was regularly castigated in the Assembly and

[27] Announced in London on April 27, 1957; see *Africa Digest*, Vol. IV, No. 6, May–June 1957.

[28] Anthropologists are one of the exceptions, and under the older dispensation, at any rate, district officers in the protectorates. The general belief that supervising labourers and domestic servants gives "knowledge of the African" adequate for making political decisions ought to be suspect by now. According to typical reports of this kind, as *Dissent* has noted, houseboys from Nyasaland universally concur in preferring life in Southern Rhodesia and think that federation is a kind of fish.

the Press for his " irresponsible " and " extreme " views. But in due course, when he was expelled from the Nyasaland Congress for not resigning his seat in order to take up a more extreme attitude against federation, the general reaction was to recast the stereotype of Mr. Chirwa, who suddenly became a " moderate," rather than to revise the general estimate of the state of opinion in Nyasaland. The intensity of Nyasaland African feeling against federation which was revealed in the 1959 emergency came to most people as a shock which even now many have not been able to absorb.

Between the European interpretation of " partnership " and the point now reached in African thinking—comprising full adult suffrage and complete equality of individual rights with no special concessions to minorities—the gulf could scarcely be wider.

Repression

The prevailing European misconception of African opinion has, however, greatly facilitated the third aspect of official policy, the suppression of independent and extra-constitutional political organisation by Africans, because the measures taken have been regarded as directed only against a small minority of unreasonable and disruptive African " agitators " who do not represent the sentiments of the African people at large. The actual use of force and imprisonment on a large scale in 1959 was the first major instance of repression, but the powers, legal and physical, which made this possible, have been built up with the approval of all European parties throughout the years since federation. The legislative sequel to the 1959 " emergencies "—especially preventive detention and the banning of organisations declared " unlawful," with the onus of proof shifted to the accused, secret tribunals and blanket indemnities for the acts of government and police officers [29]—has diverted public attention from the extent to which most of the action against the Congresses has been taken under powers established before 1959. Under these powers [30] the widest discretion has been given to the executive to

[29] See the Preventive Detention Act, 1959, the Unlawful Organisations Act, 1959, and the Native Affairs Amendment Act, 1959 (all Southern Rhodesian Measures).

[30] A full account of the legislation would require separate treatment; see the following: Immigration Act, 1954, Defence Act, 1955, Rhodesia and Nyasaland Cadet Corps Act, 1955 (all Federal); Subversive Activities Act, 1950, Inter-territorial Movement of Persons (Control) Act, 1954, Public Order Act, 1955, Peace Preservation Act, 1955, Firearms Act, 1956, Natives (Registration and Identification) Act, 1957 (Southern Rhodesian Measures); Arms and Ammunition (Amendment) Ordinance, 1953, Inter-territorial Movement of Persons (Control) Ordinance, 1954, Penal Code (Amendment) Ordinance, 1954, Public Order Ordinance, 1955, Societies Ordinance, 1955, Riot Damages Ordinance, 1955 (amended 1957), Penal Code (Amendment) Ordinance, 1955, Trade Unions and Trade Disputes (Amendment) Ordinance, 1956, Penal Code (Amendment) Ordinance, 1957, Northern Rhodesian Police (Amendment) Ordinance, 1957

suspend the liberties of people who in its opinion "might" do things which would be "likely" to, for example, "engender feelings of hostility between the races." Virtually all forms of demonstration, and extra-constitutional forms of pressure such as strikes and boycotts, have been severely restricted, associations are closely supervised, and censorship of publications is exercised. At the same time a non-African territorial army has been trained, versed in "internal security" operations, and police forces have been enlarged and reorganised for "emergency" duties.

Given the actual facts of African aspirations and support for the Congresses, the actual declaration of "emergencies" and the full use of all these powers gradually became inevitable, as the Devlin Commission in Nyasaland appreciated [31]; and this should have made finally untenable the official view about the radical nature and general popularity of "partnership" as interpreted by the European minority. The view dies hard, however. A *reductio ad absurdum* was perhaps reached when, after fifty out of the 100 Southern Rhodesian African leaders still held prisoner indefinitely after the "emergency" had been sent to Gokwe, a remote "restricted area," and had collectively refused to draw rations in protest against conditions there, the Native Affairs Department explained that this in turn was due to "pressure by a few agitators," "a few troublemakers," among the majority "who want to forget their past and become good citizens." [32]

"Whiteheadism"

Nonetheless, it is in response to the now obvious need for a more adequate justification for the régime that the harsher but more powerful form of the "economic argument" already alluded to has lately been developed. This argument is particularly associated with Sir Edgar Whitehead, a former Finance Minister and now Prime Minister of Southern Rhodesia. It declares, not that the "moral" case against the régime is unfounded, but that it is largely beside the point; that the urgent problem in Central Africa, like other "underdeveloped" countries, is economic, not political. Political and economic equality of the races, or anything approaching it, would spell administrative

(Northern Rhodesian Measures); Penal Code (Amendment) (No. 2) Ordinance, 1953 (and (No. 3) and (No. 4), 1953), Police (Amendment) (No. 2) Ordinance, 1953; Inter-territorial Movement of Persons (Control) Ordinance, 1954, Restriction and Security Orders Ordinance, 1954, Penal Code (Amendment) (No. 2) Ordinance, 1954, Police (Amendment) Ordinance, 1957, Police (Amendment) Ordinance, 1958 (Nyasaland Measures).

31 Cmnd. 814; see especially p. 24.

32 Reported in *Dissent*, No. 13, November 12, 1959; it should be pointed out that none of these men had been tried or convicted of any crime.

breakdown, corruption and the despotism of an economically incompetent African political élite; economic advance would be halted. The Europeans are therefore cast for the role of a firm but high-minded patrician class such as that which presided over the industrial revolution in England. Their duty is to suppress, however reluctantly, all opposition which threatens the social and political *status quo*, on which the long-run interests of the whole population are seen to depend. In this they are performing a service for which a future generation of Africans, colour forgotten in an era of relative plenty, will one day have cause to feel grateful.

The "case against federation" would be less strong than it is if this argument from "practical morality" or "enlightened paternalism" were not fallacious. In the nature of the case of arguments about future intentions and expectations, discussion of it must involve opinions and speculations; but it seems to involve three radical fallacies. The first is that it assumes that "development" is a straightforward "good" from which the people at large cannot fail to benefit appreciably, with a resulting growth of mass loyalty to the régime. Yet the years 1953–59, years of dramatic "development" in the Government's sense of the word, have been precisely the years of the most rapid growth of African nationalism and opposition to the régime; and at least one of the causes of this, plain to anyone who has seriously studied African social conditions in Central Africa, rural or urban, is that "development" in this sense has been at the price of social disintegration and acute poverty for the great majority of the people.[33] It may be that with a much larger national income, radically redistributive fiscal policies would become possible; what is uncertain, and on other grounds, especially in the light of South African experience, improbable, is that governments remaining primarily European-controlled will be disposed to adopt such policies.[34] Secondly, "Whiteheadism" assumes that there is a simple connection between felt prosperity (supposing that it exists and is felt) and political gratitude. It has proved possible in some cases to use the implied threat of economic *loss* to diminish the political militancy of some members of the African "middle class" —*e.g.*, the threat to withdraw a retail licence in a native location, or to dismiss an employee. But there seems to be little evidence that economic betterment is readily attributed to the character of

[33] See, *e.g.*, the *Urban African Affairs Commission* (the Plewman Commission) *Report* (Southern Rhodesia, 1958), and Guy Clutton-Brock, *Dawn in Nyasaland*, pp. 61–104.

[34] On political grounds it would seem that few governments similarly faced with the need to "purchase" political security could have such strong incentives as the South African Government, which nevertheless rejected out of hand the price which the Tomlinson Commission estimated to be necessary in order to make a reality out of the Bantustan scheme for reconciling Africans to *apartheid*.

the régime or that, if it is, people who dislike the régime for other reasons are likely to feel enough gratitude on economic grounds to overcome their dislike. Indeed there is very strong evidence to the contrary, and not only from Central Africa.[35] Finally, the argument under consideration seems to assume that colour and race, which should indeed be irrelevant to the problem of raising production, are of no consequence at all. But the analogy with, say, Britain or the U.S.A. in their industrial revolutions cannot be pressed so far. The ruling " capitalist " class and the workers in these countries were of the same stock and were not segregated physically or psychologically, in the way which colour makes possible. When colour and race are linked to inequalities and conflicts in any sphere they tend to make the antagonisms bite deep into the consciousness of the hostile groups, and in other parts of the world these antagonisms have shown few signs of dissipating so long as the races remain separate. The belief that Central Africa can undergo a generation of *baasskap* without paying the penalty of a bitterness too acute to be contained within a united and free society seems to have little to support it in our experience of human nature and politics.

Conclusion: 1960

The " case against federation " has deliberately been stated in its broadest and most fundamental terms. Federation was desired primarily in order to transfer power to the local European population who in turn desired power in order to secure a pattern of life in conformity with their own ideals. It was opposed by Africans for these reasons, and the subsequent course of policy and of African reactions to it has been a logical consequence of the decision to impose federation. People in Britain who supported the imposition of federation but have been disappointed in the result are now in a position to see how important was the previous failure to analyse the forces which would in practice determine the real meaning of " partnership."

The fundamental question is now whether Britain can agree to endorse the régime which federation has created, given her obligations as trustee for the interests of the Africans of the two protectorates, and the pledges and understandings which secured the support of liberal-minded people in 1953.

But the conference which is due to meet in October 1960 to review the constitution, and the Monckton Commission which is to

[35] Perhaps what is looked for is the justification of History, rather than the gratitude of individuals. Keynes's comment on policies which can only be justified in the very long run seems appropriate in this context, however.

prepare advice for that conference, are unlikely to consider this fundamental question.[36] On the one hand, the federal government seems likely to concentrate on constitutional changes in the territorial constitutions which would lead towards a termination of Protectorate status by handing over power to the local inhabitants—and in Northern Rhodesia, at least, effectively to the local European inhabitants. This would end the chief obstacle to making the whole federation "fully self-governing" while further consolidating the existing European tenure of power. On the other hand, the Africans of the two protectorates, in so far as their genuine representatives are allowed to take part in the "review conference," are likely to press for some constitutional reform—such as a right of secession—which would lead *de facto* to the loosening of European control over the protectorates. The latter ambition seems highly unlikely to be satisfied.

Yet after 1960 Britain will exercise little further influence on the course of events in Central Africa if the balance of power of the existing régime is endorsed; and the price at which it has been established is one which the British Government must measure carefully before its name becomes irrevocably associated with the sequel. All important African political organisations are now banned in Southern Rhodesia and Nyasaland, and the most militant one in Northern Rhodesia.[37] In Nyasaland fifty-one people have been killed and many more wounded. The main African leaders—a total of some 600—in Southern Rhodesia and Nyasaland remain in detention.[38] Independent African organisation and opposition to the

[36] In theory the "review conference" can consider anything from repeal of the federal constitution to simply endorsing the *status quo*. But the terms of the Monckton Commission seem clearly to presage an agreement between the federal and British Governments to consider only such amendments as will be consistent with the present régime, and a programme for the attainment of complete independence.

[37] All the Central and South African Congresses, and all successor organisations are banned in Southern Rhodesia. The Nyasaland Congress is banned in Nyasaland and the Malawi Party, formed since the ban as a "caretaker" for the Congress, is forbidden all meetings and demonstrations—in effect it cannot act in any way as a party. In Northern Rhodesia only the Zambia African National Congress is banned, and there is another "caretaker" organisation, the Independence Party, for it; the Northern Rhodesia Africa National Congress is still legal but appears to have lost most of its mass support to the banned Zambia Congress.

[38] Two are in "self-exile"; Mr. M. W. K. Chiume and Mr. J. Nkomo, respectively organising secretary of the Nyasaland Congress and President of the Southern Rhodesian Congress, were out of Central Africa at the time of the emergency. A detention order has been issued in Nyasaland in respect of Mr. Chiume. The figure for "detainees" excludes some 200 jailed after conviction for political offences. The 69 people who were still detained in Northern Rhodesia at the end of 1959 were released in January 1960; simultaneously, however, the most comprehensive powers yet granted to a Central African government to suppress political activity were entrusted to the Governor of Northern Rhodesia in a new Public Security Ordinance whereby he received power to suspend virtually any political activity "if at any time he is satisfied that it is necessary for the preservation of public security to do so" (*Newsletter*, January 8, 1960).

régime have been very largely stamped out. It is a strange legacy of the imperial trust. If all other considerations are excluded, the question must still be asked whether, from the point of view of Commonwealth unity and the even wider search for international peace, continued endorsement of the existing federation is really as expedient as people often suppose.

SOME REFLECTIONS ON THE LATE ELECTION

BERNARD CRICK

THE business at hand is neither inquest nor arithmetic. Admittedly, the inquest on why Labour did not (or could not) win the last election has become an almost unavoidable, almost obsessive, national pastime [1]; something to be played by any number of people irrespective of party or politics; something already firmly established even before the Labour Party, whether to entertain or to instruct, staged such an incomparable public exhibition of it, *en masse*, at Blackpool. And the arithmetic exists in part already,[2] and will, in due course, be orchestrated once more by the sobering hand of Mr. David Butler in the *Nuffield Studies on British General Elections*, a series of which each successive volume deserves more and more respect from both the *serious* student and the practitioner of politics. Dr. Robert McKenzie, whose *British Political Parties* is already a classic ready to be shelved beside Dicey, Bryce and Jennings, has already publicly told the Labour Party how to turn itself into the Northern wing (only) of the Democratic Party [3]; and he promises shortly to publish an empirical analysis of working-class Conservative voters which will provide, in more compact form, a Houghton Street crystal ball to set beside the Nuffield one on top of the student's television cabinet.

So much for footnotes to the literature. My concern is rather to raise some related problems, laid bare by the election, of such long-run political prudence that they may properly be termed constitutional, not psephological—all of which can involve either public law or the law and practice of Parliament: the problem of the two-party system, the capacity of opposition and the claims of a third party.

THE TWO-PARTY SYSTEM

The election should call into question some widely accepted views about our political system. Never before has a British political

* The author is Lecturer in Political Science at the London School of Economics and Political Science.

1 This author hopes to publish shortly in *Political Science* the results of some field work among marginal voters in Malden. From this work already the tentative hypothesis may be hazarded that Labour lost because a majority of people, for a variety of reasons, preferred the Conservatives.

2 See especially "How the Country Divided," *Economist*, October 17, 1959, pp. 215–219, *Where?* (Fabian Society, 1959) and the "Post Election Poll," *Daily Telegraph*, November 27, 1959.

3 See his leading articles in the *Observer* for October 13 and October 25.

party succeeded in gaining a working majority in three successive elections—let alone adding to both its seats and votes each time. This feat alone should destroy the myth that in a two-party system there is some inevitability about alternation. Our two-party system is clearly an historical product of the type of social division which has characterised English society since the industrial revolution. The modern cabinet system and all those tendencies of electoral law and practice which make it difficult for third parties to keep or gain an effective number of parliamentary seats clearly solidified, but did not create, the two-party system. It is endlessly disputable what is the right strength to be attached to each link in the chains of historical cause and condition which have come to bind together the system; but it is not seriously disputable that all these causes and conditions normally add up to two and to only two. And the idea of necessary alternation, while it cuts deep into our political preconceptions, yet bleeds more than binds our body politic. There should be no doubt that the idea, however empirically implausible, does cut deep. Free government, liberty itself, we are often told (or overhear ourselves lecturing), ultimately depends on a government's supposed knowledge that it is likely to be followed, indeed pursued, shortly afterwards by another. Don't cheat or you will be found out—and electoral consequences will follow; don't kick, or you will be kicked in turn; and keep time for five years, but you'll still get knocked down by the pendulum.

Now the idea of "alternation" is, in a strict sense, "liberal." It is part of an era that has vanished; of liberal assumptions that have not. An examination of the work of James Bryce, both as Liberal statesman and liberal "political scientist," would illustrate this point. He really did believe, as his American friend James Lowell tried to demonstrate statistically, that the political universe oscillated in a dignified and definite rhythm. His *American Commonwealth* and his *Modern Democracies* summed up a whole climate of opinion and are the kind of books which influence subsequent thought almost to the degree that they become known only at second hand. Bryce transmuted into politics the assumptions of Manchester political economy: given perfect competition and perfect knowledge of the market, that is, a free electoral system based on manhood franchise (with some bits of proper property bias) and a free Press, the demand of the rationally self-interested electorate for a particular party would automatically decline in favour of the other party as the price of the first (in terms of mismanagement) rose. If Disraeli mismanaged Ottoman affairs, the G.O.M. would come in; and if the G.O.M. could not govern his own friends, let alone Ireland, back would come the Tories. An enlightened public opinion,

glued to the *Morning Post's* parliamentary reports, weighed and re-weighed the issues. The public might occasionally flinch from this formidable task out of sheer laziness; but it was the statesman's duty to exhort them back again into their responsible agony of (liberal) ever-open mindedness. "Slackness," in politics as in the rest of life, was the only real natural vice—and one that people could always be "shamed out of." And, anyway, sooner or later, if anything went far enough, a "reaction" (to something) would set in—a phrase as current and as fatuous in liberal thought as is "in the last analysis" in Marxist. (Under the old liberal view of political and moral mechanics, the return of a government with an increased majority after a Prime Minister had been forced out of political life following an *unsuccessful* act of aggression against a foreign Power would have been simply inconceivable—how simple!) In a sense, this "rational alternation" view has only to be stated to see how absurd it has become; indeed neither Conservative nor Socialist would think that alternation was inherently likely or even desirable. Bryce's brand of liberal political mechanics was, at the best, the dominant ideology of a particular period of English politics. The evidence of contemporary history argues not even a contingent, certainly not a necessary, alternation. The electoral history of the Conservative Party in this century, despite the recent astonishingly close division of popular votes, shows that it is still the party overwhelmingly the most likely, other things being equal, to govern. Hence the question before the British electorate nearly always simply appears as: "shall we trust the Tories again?" rather than the Liberal "what are both offering and are they *sincere*?" The identification of the Conservatives with—never mind definitions—the great felt-thing, the Establishment, strengthens this anti-alternating tendency, this bias in the system arising from the snobbery of the mean streets every bit as much as from the conceit of the clubs. But the very *establishing* of Conservative power, the quite "constitutional" status of the Conservative Party, is itself the factor which enables the natural dissidence of dissent to coalesce into one opposition Historically, the Labour Party cannot be sensibly pictured (by friend or foe) as a Socialist movement with a programme driving towards perpetual office; it is rather a gathering-up into coherent opposition of diverse tendencies: Nonconformist England united by dislike of, or ostracism by, the Establishment. Thus there is a two-party system, but one in which the chances are unequal.

So far so abstract: but the practical point is obvious. Many of our traditional liberties have been held to depend on the alternation of the parties. To many, "liberty" could be defined (in minimum

if not complete terms) as those rights and conditions necessary to ensure regular and peaceful changes of government—despite the fact that liberties of the subject have usually been established by the courts against the interest of the government of the day (*vide* Wilkes), at times when governments have not had *sufficient* regular control over Parliament to risk annulling popular judicial decisions. We are now in great danger of taking for granted the beneficent effects of a process that does not take place. It is no accident that there has suddenly sprung up a rash of demands for legal safeguards against all sorts of actions hitherto trusted to the discretion of public authorities: phone-tapping, immigration procedures, Press access to council meetings, employment policy regarding race, etc. And, even from those most enamoured of the meaningless dogma of the "sovereignty of Parliament," murmurs of vexation have arisen at Parliament's wildly elastic and erratic interpretations of "privilege." More and more talk is drawn towards the American concept of "civil liberties," a concept quite un-English so long as the essence of English politics was held to be a natural rhythm of alternation which made formal safeguards unnecessary. The point here does not rest upon the merits of these particular cases. The point is simply that there is now a growing sense of need for "constitutional" clarification and consistency on a whole range of issues previously thought best left to the discretion of particular governments, on the grounds that no government could, by fair means, dig in for too long. This is not even to impute a general catch-all quality of "complacency" to the leaders of the ruling party; the publicists of both parties have been slow to admit that a timorous plea for legislative safeguards is more realistic than the manly posturing of hope for a new government soon. What is fundamental to (reasonably) free government is—surely?—not regular alternation as such, but the constitutionalising of an already established opposition. (There must *be* an opposition—it cannot be artificially created when, for instance, a young country is dominated by a nationalistic rage for unity; but an opposition at all, if it is to be effective, must be given special abilities to criticise, and also special protection from prosecution—such as members of governing groups normally only share among themselves: privilege, immunity, pay, honours, etc.) Grave doubts could be raised about the suitability for export to "underdeveloped" areas of British institutions based on the assumptions of a two-party system. But what is also forgotten is that, even in Britain itself, the effectiveness of opposition is likely to decline sharply if one party succeeds in staying in power for long consecutive periods of time.

The Capacity of Opposition

The mere fact that there is a bias in the constitution in favour of a two-party system does not ensure, then, that the party out of office will have the capacity for effective opposition. Only the "fallacy of alternation" could sustain one in this belief, certainly not the result of the last election. An opposition deploying for a third term faces grave and obvious disadvantages. The animating hope of office must now burn very low; and there are good grounds for believing that party cohesion in Parliament depends far more on the hope of patronage (both of office and honours) than it does on the "Premier's power of dissolution," beloved in the textbooks, or on the old but always thoroughly shaky assumption that the Leader controls, or even tries to control, nominations in the constituencies. So not merely does long opposition tend to weaken the Leader's hold over his followers, and therefore to substitute gusts of scattered criticism for a concentrated hammering on a few clear themes; but an Opposition can only expect that its *most* distinguished members will be helped by honours to retire with honour when retirement is long overdue: its phalanxes of lesser—but still—luminaries have to hang on to their fading seats in hope.

This, by itself, might be a natural fact of politics against which the public interest in effective opposition can take out no possible form of constitutional insurance. It is easy to argue that the Leader of the Opposition—himself already, by his salary, a constitutional figure—should have a larger share of the honorific patronage available; yet it is not easy to feel that this idea would be acceptable nor yet, even if it were, would readily meet the case. For to the normal inevitable depression of a long-term Opposition must be added the more general decline of parliamentary control over the executive. To some this is a wearisome theme. Some lawyers and most academic students of politics have cried "wolf! wolf!" so much in the past—a particularly hardy old wolf being called *New Despotism*—that some who should know better, Lord Morrison of Lambeth as much as Mr. R. A. Butler, have had their ears impenetrably stuffed with best ministerial wax against the now quite obvious complaint that the powers of the executive and the scope of administration have far outstripped any attempt by Parliament to alter its ways to keep track of them. Parliamentary procedure exists, after all, fundamentally (or platitudinously) both to put through government business in an acceptable manner *and* to launch into the public air criticisms of the Government's conduct of its business and public grievances of all kinds. Things are both lawful and politically just when these two functions of Parliament are perfectly poised at each other's throat. This does not imply the capacity to obstruct

government business (the business of government is, after all, as the old Liberals often had to be reminded, to govern, not to discuss), but only open and informed criticism of it. "Parliamentary control" has rarely meant a real risk that a government might be defeated in Parliament, but has rather implied the existence of an electorate, who *may* hear some things said, without whose confidence any government, if it is to govern at all, cannot last. The question becomes one of whether what was thought necessary to ensure open and informed opposition under eighteenth-century conditions—broadly the immunities and privileges of individual M.P.s and the freedom of the Press—is adequate today. It would only be a slight over-simplification to argue that the only fundamental changes that have helped the capacity of opposition to keep pace with the capacity of government have been the payment of members and the extension of the idea of privilege from official proceedings of the House to cover party meetings within it.

Some of the most apparently trivial things affect the capacity of Opposition most. The almost complete lack of office and secretarial facilities for M.P.s tells far harder against the Opposition than against the Government in any case; Labour seems the normal Opposition and far more Labour members depend on their parliamentary salary than do their opposite numbers. The low salary and the lack of any proper state-supported pension scheme hit any Opposition hard—and again hit a Labour Opposition particularly hard. Another range of considerations handicaps a Labour Opposition: talented men of the Right still view Parliament as intrinsically, or socially, a good place to be in, even if part-time: the natural arena and showring of those already established elsewhere—this attraction may be a declining force, but it is still a real one. But the talented man of the Left is far more likely either to plunge into Parliament full-time, hook, line and sinker, *or else* to cast his net of idealism and interests part-time over a far richer variety of substitute activities, political societies, reform societies, crusades and even unions, than exists for the politically conscious Conservative. This is not, nor should it be, something remediable by Act of Parliament, as facilities for criticism within the House (whatever its composition) may be. But it adds to those other modern conditions which, when taken all together, seem to demand some compensatory action if the balance of Opposition to Government is not to continue to decline.

The House has shown a stubborn resistance to turning over part of the work, at least, of its general Standing Committees to specialist committees; to considering the Finance Bill in committees less large than the whole ramshackle House; to making research facilities independent of Whitehall available to committees of the House; and

to expanding their Victorian gentleman's library into a real centre of research independent of the Government. All these things represent a refusal to keep pace with the executive—or a refusal by the executive to let the House do so. The *Report of the Select Committee on Procedure*, 1959, must surely rank as one of the most empty reports ever issued by the House (and it does not suggest that Front Bench restriction is more to blame than Back Bench lack of imagination). The inefficiency of Parliament hits the Opposition particularly hard, though it hurts Back Benchers in general. For the decline of parliamentary control of the executive is not due to the demise of the " independent member," but is due to the lack of effective committee work within the House, to the lack of institutions that can provide alternative sources of information on complex matters to the briefs and reports furnished by Whitehall to the Ministers. In modern conditions, criticism needs to be criticism in depth not just in principle; except for the Select Committee on Public Accounts and the Select Committee on Nationalised Industries the House is almost totally lacking in bodies that can talk with an informed authority—apart from what is done for the Leaders of the Opposition by their national party research division. Even the old device of the Select Committee has shown, throughout the century, a steady decline in favour of departmental and interdepartmental committees. The point is not that the powers of the executive need to be diminished; but that strong government needs strong criticism and that free government needs the constitutionalising of opposition in a manner relevant to the demands of the day. This is no place to discuss detail of parliamentary reform. But to anyone outside Parliament the point seems ludicrously obvious that the institutions which sustain opposition have fallen dangerously behind the development of the executive. Opposition is not merely relatively ineffective, it is, for the same reasons, relatively unattractive. The time may come when the Parliamentary Labour Party had better be composed of pure idealists —with, if possible, a taste for procedural antiquarianism.

How has this come about? In part simply through a decline in constitutional thought in this century, due to an almost total absorption in substantive issues and to a gentle belief in the fallacy of inevitable alternation; but also through a mood of stubborn nostalgia about procedural " traditions " which dominates the House of Commons itself. It hardly needs comment that this self-glorification of ineffectuality by erudite Back Benchers receives little discouragement from the Front Benches. The spirit of parliamentary procedure can be likened to that good old body our common law: she is of so complex and arbitrary a nature that to master her fully is to become absurdly jealous of her precise retention, not because one

enjoys her all that much, but because one bitterly remembers the difficulties of gaining her; indeed in time she becomes almost genuinely lovable, though unfortunately not for any simplicity of form or for any gifts of intellect, but simply for her sheer capricious intricacy. If this figure is acceptable, it is perhaps not curious that the few people who really can master the procedure with habitual ease, the Clerks of the House, have shown themselves at all times, to judge by evidence put before the Select Committees on Procedure of both 1945–46 and 1958–59, far more ready to contemplate and suggest large reforms particularly towards specialisation in the committee system, than have their masters the M.P.s. The servants of the House, the real professionals, the real (I apologise) technicians, are not so servile and thankful in their sufferance of existing procedure. They recognise it as a means to an end: the end of putting through business in an acceptable manner, that is to say a manner that ensures that it gets through, but only after close, careful and informed scrutiny of details and open criticism of principles. Many Back Bench M.P.s, frustrated from real work, take to chewing frozen procedure as a genteel anodyne.

If there is not alternation of parties, it would seem quite clear that Parliament cannot play its true role as *both* the source of initiative and the centre of discontents unless the weary task of opposition is made more attractive. This can readily be done by improved conditions of service, better pay, access to sources of information alternative to Whitehall, and the provision of real work to do—the return to the House of many of the investigatory and deliberative tasks now needlessly placed in the departments. The institution of opposition is a formal part of the constitution; but it has not kept pace with changes elsewhere. Only an effective Opposition can maintain public confidence in the two-party system during times when one party seems the natural, semi-permanent governing party. It is natural (and thus perhaps proper) for a government with a slim majority, coming new to power, to control Parliament so as to make things difficult for the Opposition; but even if it is not natural, it would be wise for a government with a large majority and long in office to make the conditions of Parliament as easy as possible for the Opposition. Otherwise, as there are already ample warnings, Parliament and the two-party system decline in popular esteem. Parliamentary reform is needed not to change the constitution, but to preserve it.

The Claims of a Third Party

The relative success of the Liberals in the last election should be treated as a constitutional problem because they show that a

sizeable number of people are disaffected with the present working of the two-party system. Their very existence challenges an examination of the working of the system in relation to public confidence. This is not to raise the alleged issue of proportional representation—or even the "alternative vote." If the ethically desirable must be, as Hobhouse put it, the sociologically possible, then proportional representation is not an *issue* in any sense more real than for those few souls who think that the government of the country should be conducted under the maxim of "let's be fair to the Liberals." Such issues are simply not real issues in British politics. Liberalism has always pretended that "democracy," or just plain manhood-suffrage, arose because people converted their rulers to the belief that each man has an inherent right to vote often and ingeniously; therefore he has a right not to have his vote wasted and therefore it is unjust that parliamentary or local government seats should not mirror exactly popular votes (irrespective of the overwhelming majority who do not vote at all in local elections and parliamentary by-elections). But Conservatives and Socialists should surely have in common the more realistic view that governments broadened the franchise simply in order to carry on governing the country effectively when the skills of new industrial classes became necessary to the national welfare. Our constitution makes *government* as a going concern responsive to popular demands; it does not try to build up a government from a precise proportioning of popular demand. The Liberals are in the position of American third parties; they are not to be treated as serious contenders for power, but as cautionary symptoms of potential failures in the existing system.

On the first flushed face of it, the Liberals had reason to be pleased with their performance in the late election. Their average share of the vote in the 217 seats that they contested was just under 16·9 per cent., compared with 15·1 per cent. in the 110 seats they contested in 1955. Their average share of the vote rose from 16·5 to 19·6 in the ninety-one seats which they fought in both elections. In "new" contests they piled up a good first innings' average of 14·9. Their most telling statistic, however, is that in twenty-seven constituencies they came second to a Labour or Conservative incumbent, compared to only seven last time.[4] Thus, as the *Economist* put it: "If they can make one more heave up to a general expectation of getting over 25 per cent. of the vote, people are going to begin to ponder the possibility of their winning three-cornered contests in the most surprising places." But this would still leave them, on the most optimistic assumptions possible, such a distance from being

[4] See *Economist, op. cit.*; see also David Butler in the *Daily Telegraph, op. cit.*

regarded as an alternative government that it would take some political miracle, or catastrophe, to bridge the gap. And *the* most optimistic assumption, as put about by the Liberals themselves, seems just not to be true: that their votes have come overwhelmingly from former Labour voters, and that therefore a cumulative collapse in that party will take place in their favour. By comparing the overall swing to the Conservatives in seats contested and uncontested by Liberals, the *Economist's* correspondent actually said that it was clear "that most Liberal candidacies in this election were more harmful to the Conservatives than to Labour." Dr. Hugh Berrington, however, has shown that while the Liberals did indeed take more votes from the Conservatives than from Labour, this was due to the fact that in the seats they contested there were more Conservatives to take them from.[5] Taking the *proportion* by constituencies, not the absolute numbers, of Liberal gains from both parties, Dr. Berrington found that over the country as a whole (with substantial regional variations) the Liberals took more votes from the Conservatives than they did from Labour in the ratio of 51:49. This fantastic equality of negative influence (lost one seat, gained one seat, still six as before and before that) does not argue that the Liberals are anywhere near the right road to replacing Labour as *the* party of the anti-Establishment; but it does argue that the Liberals do not have a very positive image—as the talk is now all of images—to those who voted for them. Liberal candidates, particularly the young ones (who have little if anything to do with the habits and history of the old Liberal Party), may take their intellectual *blancmange mélange* of a programme seriously, but it looks as if, after all, on the evidence of 51:49 ratio, their electorate was mostly composed of disgruntled voters of the two great parties—not thoughtful owner-occupiers of small 1912-ish houses cogitating on the joys of co-owning cotton.

For no party would it be more misleading to accept the word of its candidates as to its *raison d'être* or the reasons why people voted for it. Quite clearly the eclectic idealism and the intelligence of its young candidates can only find a mirror in the electorate in some generalised quality of "liking independence"—but then "independence" can only ever be defined in terms of "from what?" An empirical study by some Nuffield or L.S.E. graduate student based on interviews of Liberal voters would be a useful and placatory offering to the gods of controversy. But may one guess what they would find? That among Liberal voters—that is 16·9 per cent. of those voting in the seats they contested (just over a million-and-a-

[5] See *Where?, op. cit.*

half citizens)—disgust with " politics " as such predominated; disgust with " political parties "—" they are both just as bad as each other "; " it's all a fix," " we get the butt end of everything ": phrases I myself have heard from Liberal voters. Many Liberal voters, in other words, seem not merely unreconciled to the party system, but unreconciled to politics—a-political people turning anti-political. If many Labour voters are not in any real sense " socialists " but simply " anti-Establishment," so many Liberal voters appear to be primarily anti-party. This is, of course, not unnoticeable even among many of their candidates and among at least one-sixth of their Parliamentary Party: the quality of being the party of anti-party.

The doubling of the Liberal vote between 1955 and 1959 is surely not unconnected with the factors that suddenly threw up, in the spring of 1956, a strangely forgotten movement: The People's League for the Defence of Freedom. This flare-up of middle-class indignation clearly enrolled several hundred thousand members in that strange spring and summer when British politics seemed stuck in a slough of angry boredom. The Suez crisis virtually destroyed the League; the former Conservative voters and supporters, who predominated in the rank and file of the League, rallied back to the flag once the old party raised it again; and the outraged non-politicals went back to suburban earth, but to emerge again, I would suggest, in the Liberal ranks in 1959. They were among those who filled the Empress Hall in one of the many summer rallies of the League and who cheered loudest of all the assertion that they were " the biggest party of all—the party that is fed up with both parties." The League itself has collapsed as a serious force—its antics in the bus strike and in the printing strike prove that. But there should be little doubt, only forgetfulness, that in the spring and summer of 1958 it grew swiftly and astonishingly and that its programme, then as now, in however general a way, expressed many deeply felt popular grievances.[6] The rise of the League was heralded by a notable series

[6] These five points under the heading " The Fight Opens Against Trade Union Tyranny and Arrogant Bureaucracy " appeared in every published advertisement and leaflet of the League (only the second point had a peculiar rather than an obvious explanation):

1. To organise public support . . . and help for all citizens whose standard of life or freedom is threatened by the growing abuse of power by trades unions, or by administrative tribunals against whose decision there is no right of appeal to an independent judicial authority.

2. To uphold the liberty of the Press by sponsoring a printing undertaking free from trade union dictatorship.

3. To seek by all constitutional means to reform the law as it affects trades unions in order that they cannot act as a state within a state or put themselves above the law.

4. . . . to campaign for the progressive reduction of all rates and taxes and the elimination of bureaucratic waste.

5. To combine in protecting its members from any infringement of their traditional liberties from whatever source it may come.

of discussions and editorials in the Press on "the state of the middle classes." Even *The Times* ran a leader called "The Middle Class," a writing less remarkable for subtlety of sociological analysis than for a sweeping assertion that "they are being destroyed by taxation." But it did go on to make what may well have already proved to be a remark of rare prescience: "In its lower ranges the middle class must contain much of the floating vote which veered towards Labour in 1945 and back to the Conservatives in 1955—but may now be uncertainly poised." It is likely that some proportion of it, at least, went Liberal in 1959: a Liberal vote composed as much of people like those whose abstention nearly cost the Conservatives the Tonbridge by-election of the spring of 1956, as of former Labour people not keen on more or any nationalisation.

The motives and the good sense of five-sixths of the Liberal leadership in Parliament are not called in question; what is called in question is whether the increased vote for Liberal candidates represents a Liberal revival or a kind of John Bullish Poujadism. Something, at least, of the latter influence has shown itself. If these people compose any sizeable proportion of the Liberal vote, there is then some cause to worry that even so many people can be in revolt against the assumptions of the two-party system—whether the "fictional" assumptions of an alternating two-party system, or the more historical assumption of a two-party system in which, for long periods of time, one party is *the* Government and the other party is *the* Opposition.

Conclusion

In other words, there is serious need for reflection upon the constitutional position of the Opposition and upon the vitality of the two-party system. If it is said that no government in power will willingly strengthen the Back Benches against the Front, which ultimately means the Opposition against itself, the rebuttal is perhaps to be found in the power of the Liberals to draw votes equally from the Conservatives and from the—allegedly moribund—Labour Party. The Tory Party has every bit as much an objective interest as the Labour Party to make people feel that their interests are adequately represented within the existing two-party system—a system which suppresses at its peril issues that people feel to be issues. People will have this confidence if Parliament appears to be a lively and active place; if the Government appears to have to fight for what it wants even if, as in stage battles, the result is always—bar accidents —predetermined.

These considerations are more real than the queer journalistic concept of "split" or "impending split" which is used to characterise

(or threaten) the more formally democratic, and thus openly contentious, way in which the Labour Party makes up her very collective or coalition mind, compared to the oligarchic, and thus publicly discreet, if often privately bloody, way in which the Conservatives congeal. It is all too obvious that the Labour Party is—shouting from the rooftops—about to lurch back into line with public opinion and changed circumstances, in the same way as the Conservative Party, from 1945 to 1950, rethought, reorganised and re-emerged on top. The "state of the parties" is still, after all, fairly sound. Not even exultant Tories or Socialist Jeremiahs can sensibly see the collapse of the Labour Party in sight; it still commands the votes of 43·8 per cent. of the electorate, a solid block of twelve million voters against the Tory thirteen. But the state of the party system is less good. The election has clearly shown that a salary for the Leader of the Opposition is not sufficient guarantee that the country will get the opposition it needs. Either the facilities for opposition must be strengthened, or many matters touching the "liberty of the subject" now discretionary must, in future, be made legal.

Of prime importance would seem to be the matters of parliamentary reform already touched upon. Pay, secretarial and research facilities could all be expanded in the direct public interest. More thorough-going scrutiny of the work of the executive by specialised committees of Parliament is needed on grounds quite apart from the general interest of the public in effective opposition. More publicity for political affairs generally would help. There is room, for instance, not merely to consider the televising of major debates, but to think of dropping parliamentary privilege as applied to the proceedings of *party* committees inside the House. And it is high time that the confused field of electoral law was looked at as a whole by some competent body. There seems, for instance, much to be said for the short "official" campaign practised in this country, as distinct from the long drawn-out disruptive agony of the American system; but there is little to be said for the excessive tightness of control of money spent in the campaign, and the almost complete lack of public accountability for money spent in the open season. And there is much to be said for making even the independent television authorities drop scheduled political discussions, etc., during a campaign in favour of official party broadcasts; but there would be a lot more sense in this restriction if the parties were given more air time, both sound and television, both B.B.C. and I.T.V., outside campaign time. The campaign as a concept of public law rests almost entirely upon the idea of corrupt practices; there is need for it to be rethought as a concept of *equal access* to the electorate by the Opposition as compared to the Government. So far from Parliament trying to

stop discussion on sound and television of matters before the House, it should insist that time is given by all networks to a Government spokesman *and* one nominated by the Opposition to explain their stand on all matters of important legislation before the House. Let the B.B.C. stick to its highly formal reporting. But is there any absolute objection to a fifteen-minute polemical "Today in Parliament" divided equally between leaders of the two parties each night Parliament is in session? After all, the owners of the I.T.V. companies owe Parliament a fair debt of gratitude. Such devices would at least help to kill with one public stone those two birds who otherwise threaten to fly away: public interest in Parliament and the critical effectiveness of opposition. Otherwise any government will continue to get away with too much too easily.

So the last election should teach us that though to talk of "our two-party" system is indeed to talk of a very hardy growth, yet to think that it has the habit of natural alternation between the two parties is an enervating, even a dangerous, delusion. There is need, at almost every level, to reconsider the constitutional conditions under which the parties operate—or else to turn, more and more, to think of law and not political opposition as the fundamental safeguard of the liberties of the subject. Which the cart and which the horse? No one who has been jolting in the saddle for too long, however beloved and betrusted by the passengers, should ever trust himself to make (or even to let slide) this decision alone.

THE CONSTITUTION OF THE STATE OF SINGAPORE

O. Hood Phillips

Introduction

Singapore together with Penang and Malacca formerly constituted the Straits Settlements.[1] Freed from the control of the Government of India in 1866,[2] the Straits Settlements, with Singapore as headquarters, formed a separate Crown Colony for the next eighty years. In 1946, soon after the end of the Japanese occupation of Malaya, the partnership was dissolved.[3] The Settlements of Penang and Malacca were joined first to the new Malayan Union [4] and then to the Federation of Malaya,[5] losing their status as British Colonies when the Federation acquired its independence nine years later.[6] Singapore in 1946 became a separate Crown Colony, administered by its Governor through officials and with a non-representative Legislature.[7]

The Island of Singapore, just over 1° north of the equator, is situated off the southern extremity of the Malay Peninsula. In modern times it has been joined to the mainland of Johore, three-quarters of a mile away, by a causeway carrying a road and a railway. It is about the size and shape of the Isle of Wight, the City of Singapore (about the size of Glasgow) covering the central southern part. There are also about forty nearby islets.[8] Singapore possesses a fine natural harbour, which has enabled it to become one of the biggest entrepôt ports in the world, especially notable for the export of Malayan tin and

* The author is the Barber Professor of Jurisprudence in the University of Birmingham.

1 See R. St. J. Braddell, *The Law of the Straits Settlements* (Singapore, 2nd ed., 1931); Sir Frank Swettenham, *British Malaya* (3rd ed., 1948); Sir Richard Winstedt, *Malaya and its History* (2nd ed., 1951); Sir Reginald Coupland, *Raffles of Singapore* (3rd ed., 1946).

2 Straits Settlements Act, 1866.

3 Straits Settlements (Repeal) Act, 1946.

4 Malayan Union Order in Council, 1946.

5 Federation of Malaya Agreement, 1948; Federation of Malaya Order in Council, 1948.

6 Federation of Malaya Independence Act, 1957; Federation of Malaya Independence Order in Council, 1957.

7 Singapore Colony Order in Council, 1946, and Royal Instructions dated March 27, 1946, both as amended from time to time.

8 The administration of the much more distant Cocos or Keeling Islands and Christmas Island has recently been detached from Singapore, and placed under the authority of the Commonwealth of Australia; Cocos Islands Act, 1955; Cocos Islands Order in Council, 1955; Christmas Island Act, 1958; Christmas Island (Transfer to Australia) Order in Council, 1958.

rubber. The British naval base, which serves the Far Eastern Fleet, possesses a large dry dock and several floating docks. The R.A.F. maintain three airfields. The Army base, besides accommodating a strategic reserve, supports the British troops stationed in the Federation of Malaya under the defence agreement. Civilian employment by British forces is certainly significant, but " the Dockyard " is not nearly so important a factor in the economic life of Singapore as it is in that of Malta. The 1957 census found the population of Singapore to be nearly 1,500,000, an increase of 54 per cent. in ten years. The population of the City is 912,000, not counting several hundred thousand living in neighbouring " rural " districts which are virtually suburbs. The density ranges from 849 persons per square mile in one agricultural district to 234,000 persons per square mile in part of the City. The Chinese comprise 75 per cent. of the population, Malayans 13·5 per cent. and Indians and Pakistanis 8·5 per cent. It is a remarkable fact that over 50 per cent. of the population are under nineteen years of age.

The first direct elections to the Legislative Council of Singapore were held in 1948.[9] By 1953, when the Rendel Commission began its work, the Legislative Council had an unofficial majority, a situation that is always difficult as such a Legislature has no responsibility and the Governor must have the reserved power of pushing through legislation which he thinks is essential. The Executive Council, with two elected and four nominated unofficial members, still had an official majority. Although it was a purely advisory body, there was an understanding that the Governor would not act against the unanimous advice of the unofficial members.

The Constitution that came into force in 1955,[10] based on the recommendations of the Rendel Commission,[11] gave to Singapore a Legislative Assembly with an elected majority; a Speaker appointed to preside in place of the Governor; six (later seven) elected Ministers, led by a Chief Minister; and a Council of Ministers to form the chief policy-making body. This Council, consisting of the Governor as chairman, three *ex officio* Ministers (Chief Secretary, Attorney-General and Financial Secretary) and the elected Ministers, was intended to be an embryo Cabinet. The Chief Secretary (previously Colonial Secretary) retained charge, under the Governor, of internal security. The Governor was generally required to act on the advice of the Council of Ministers in those matters on which he was obliged to

[9] Singapore Colony (Amendment) Order in Council, 1948.

[10] Singapore Colony Order in Council, 1955; Royal Instructions dated March 4, 1955; Singapore Colony (Amendment) Order in Council, 1956.

[11] *Constitutional Commission, Singapore* (Singapore, 1954). For an account of the work of this Commission, see O. Hood Phillips, " The Making of a Colonial Constitution " (1955) 71 *Law Quarterly Review*, p. 51.

consult them; but he retained important discretionary powers and the reserved power of "certifying" Bills, and he was instructed to reserve his assent to thirteen kinds of Bills.

The attainment of an elected majority in the Legislature, together with a degree of responsibility of Ministers to the Legislature, is, of course, an important landmark in the constitutional development of a dependent territory. As a result of the elections held in April 1955 Mr. David Marshall, a barrister who had previously played no public part in Singapore politics, was invited to form a Government as leader of the Labour Front, a new party which had won the largest number of seats. He took office in coalition with the Alliance Party —the United Malay National Organisation (U.M.N.O.), the Malayan Chinese Association (M.C.A.) and the Singapore Malay Union. Mr. Marshall never really tried to work the Rendel Constitution, but almost immediately pressed for self-government. On July 25, 1955, the new Legislative Assembly resolved that "colonialism" should be brought to a speedy end in Singapore; and on April 5, 1956, the Assembly passed a resolution that its Delegation to the forthcoming constitutional talks should "seek forthwith for Singapore the status of an independent territory within the Commonwealth," offering an agreement with the United Kingdom that the latter should control external defence and "give guidance" in foreign relations other than trade and commerce. A Constitutional Conference was convened by the Secretary of State in London in April 1956 (here referred to as "the 1956 Conference").[12] The Singapore Delegation, headed by Mr. Marshall, represented all the parties in the Legislative Assembly. M. Lennox-Boyd explained that the British policy was to carry forward the devolution upon the people of Singapore of the direction of their own affairs; to ensure the maintenance of the democratic way of life in Singapore, and its defence against external or internal attack; and to maintain the position of Singapore as a great commercial and trading centre in South-East Asia, as well as a major strategic centre and base in the defence system of the free world. Mr. Marshall submitted a memorandum and heads of agreement for a "sovereign" and "independent" Singapore, followed by a draft Independence Bill.[13] Mr. Lennox-Boyd maintained that the demand for "sovereign independence," even if subject to suspension during the first few years, was incompatible with the continued responsibility of the United Kingdom for defence and external affairs; and he countered with an outline of his own proposals,[14] which became the basis of the discussions at the fresh Conference held in the following year.

[12] *Singapore Constitutional Conference* (1956), Cmd. 9777.
[13] *Ibid.*, Appendix 4; Appendix 6.
[14] *Ibid.*, Appendix 5; Appendix 8.

After the breakdown of the 1956 Conference, Mr. Marshall resigned as Chief Minister. He was succeeded by Mr. Lim Yew Hock (Labour Front/Alliance), a pioneer of the Labour and trade union movements in Singapore, who had been chosen on that ground as a member of the Rendel Commission. Mr. Lim Yew Hock headed an all-party Delegation to another Constitutional Conference convened by Mr. Lennox-Boyd in London in 1957 (here called "the 1957 Conference").[15] Agreement was soon reached on all the main outstanding points. This Agreement was approved by twenty-three votes to two in the Singapore Legislative Assembly, and forms the basis on which the constitutional instruments were drafted. Some minor points were finally settled at further talks in London in 1958 (here called "the 1958 Conference").[16]

Constitutional Instruments

The fundamental source of the new Constitution is the State of Singapore Act, 1958. The reasons why an Act of Parliament was necessary are explained by the provisions of this short statute. Section 1 (1) confers the title of "the State of Singapore" on the former Colony. Singapore is therefore no longer called a Colony, though its Legislature remains subject to the provisions of the Colonial Laws Validity Act, 1865, and the Colonial Office is still the British Department responsible for relations with Singapore. Mr. Lennox-Boyd said at the 1957 Conference that he understood the feelings—shared, incidentally, by all parties in Malta—which prompted the Singapore Delegation to ask that this responsibility should be transferred to the Commonwealth Relations Office; but he explained that this was not possible under the present division of responsibilities between the two departments. In fact, the functions of the Commonwealth Relations Office, concerned as they are with independent territories, have become mainly diplomatic in nature. The general power of framing a Constitution by Order in Council is also conferred. The subsection then goes on to amend section 1 (3) of the British Nationality Act, 1948, by including the State of Singapore among the countries whose citizens are British subjects or Commonwealth citizens by the law of the United Kingdom and its dependencies. Section 1 (2) takes away the power to make fresh Orders in Council for Singapore under the British Settlements Acts, 1887 and 1945, and the Straits Settlements (Repeal) Act, 1946. Section 1 (3) provides that the Constitution Order, except as is otherwise expressly provided therein, may only be revoked or amended by Act of Parliament.

[15] *Report of the Singapore Constitutional Conference* (1957), Cmnd. 147.
[16] See *Singapore Annual Report, 1958*, pp. 298–302.

Section 1 (4) authorises the making of incidental, consequential and transitional provisions by Order in Council, subject to annulment by resolution of either House.

What is in this article referred to as " the Constitution " is contained in the Singapore (Constitution) Order in Council, 1958, made under section 1 of the State of Singapore Act. It came into force on June 3, 1959, following the general election held on May 30. The Royal Instructions to the Queen's Representative (Yang di-Pertuan Negara) dated December 12, 1958, complete the constitutional instruments.

The most important change made by the new Constitution is that responsibility for internal security, as well as finance and law, is transferred from the United Kingdom to elected Ministers. Singapore thereby acquires " internal self-government." The Chief Minister becomes Prime Minister; the Council of Ministers becomes the Cabinet, which is responsible to the Assembly; *ex officio* Ministers and nominated members of the Legislature are abolished; and the Queen's Representative or local Head of the State is to be Malayan born. On the other hand, there is a separate United Kingdom Commissioner to supervise the United Kingdom's continuing responsibility for defence and external affairs, in conjunction with a joint Internal Security Council.

The Singapore (Consequential Provisions) Order in Council, 1959, provides that existing laws which applied in relation to Singapore immediately before its new Constitution came into force shall continue so to apply subject to certain modifications, and with certain exceptions as regards the laws of the Federation of Rhodesia and Nyasaland.

Yang di-Pertuan Negara

Mr. David Marshall's proposal at the 1956 Conference for an independent sovereign State within the Commonwealth would have involved the appointment by the Crown of a Governor-General on the lines laid down by the Imperial Conference of 1930. Mr. Lennox-Boyd's counter-proposal envisaged the Queen's representative as a " High Commissioner." At that time it was said that the proposal that there should be both a High Commissioner and a Governor-General (or equivalent) raised difficulties. At the 1957 Conference, however, Mr. Lim Yew Hock's proposal that a Malayan-born personage should be appointed to act as the Queen's representative, and that a separate post of representative of the United Kingdom Government should be created, was agreed, and it was then decided that the Queen's representative should be given the Malay title of Yang di-Pertuan Negara (Head of State). That the Singapore Government should be

consulted concerning the person to be appointed was agreed at the 1958 Conference. Part II (ss. 4–14) of the Constitution therefore provides for the Representative of Her Majesty, known as the Yang di-Pertuan Negara, to be appointed by the Queen from among persons born in Malaya, after consulting the Government of Singapore.[17] He is to hold office during Her Majesty's pleasure for a maximum term of four years, but may be reappointed from time to time. His powers and duties are derived from the Constitution Order in Council and other laws in force in Singapore and (subject thereto) from his Commission and Royal Instructions. He is required to take an oath of allegiance to the Queen. His remuneration and Civil List are provided by the Assembly and charged on the Consolidated Fund, and may not be diminished during his continuance in office. The functions of the Yang di-Pertuan Negara are similar to those of a Governor-General of a Dominion or Head of State as regards such matters as the appointment and dismissal of Ministers, assenting to Bills and dissolving the Assembly.[18] In exercising these functions he is entitled to any information concerning the Government of Singapore which is available to the Cabinet.

Royal Instructions dated December 12, 1958, require the Yang di-Pertuan Negara to consult with the Cabinet, or a Minister acting under the general authority of the Cabinet, in the exercise of all his powers and functions, except those which are by the Constitution expressly exercisable on the advice of any other person or authority (*e.g.*, the United Kingdom Commissioner [19] or the Public Service Commission [20]), and except those which are by the Constitution expressly exercisable by him in his discretion (*e.g.*, appointment and dismissal of Prime Minister [21] or dissolution of Assembly [22]). Where the Yang di-Pertuan Negara is required to consult the Cabinet or a Minister or other person or authority, he must act in accordance with that advice. In the exercise of his discretions, he is expected to act as far as possible in accordance with the constitutional conventions applicable to the exercise of similar powers by the Sovereign in the United Kingdom.

The United Kingdom Commissioner

The United Kingdom Commissioner is the representative of the British Government (ss. 15–19). After the transitional period of six

[17] As a transitional measure, it was agreed at the 1958 Conference that for the first six months of the new Constitution the office of Yang di-Pertuan Negara should be held by the United Kingdom Commissioner. This was provided by s. 107. Sir William Goode, previously Governor and formerly Chief (Colonial) Secretary of Singapore, assumed both offices.

[18] *Cf.* Federation of Malaya Independence Order in Council, 1957, Art. 40; Ghana (Constitution) Order in Council, 1957, s. 4.

[19] s. 74 (6).

[20] s. 81.

[21] ss. 21, 22.

[22] s. 62.

months, his office is combined with that of Commissioner-General for South-East Asia. He has very important functions in connection with the Internal Security Council (*infra*). Section 18 (1) states that the United Kingdom Commissioner is entitled to be provided with copies of: (a) the agenda of the Cabinet; (b) a list of all matters discussed by the Cabinet which were not on the agenda, and a statement of the decisions and conclusions of the Cabinet relating to matters which, in the opinion of the Prime Minister, either affect the responsibilities of the United Kingdom Government for defence and external affairs or are matters which the Commissioner may wish to raise in the Internal Security Council; and (c) all other papers laid before the Cabinet relating to matters of the kind mentioned in (b). The 1957 Conference only mentioned agenda and papers, and it was pointed out at the 1958 Conference that important items affecting the United Kingdom's interests and responsibilities might arise under " other business." The British draftsmen would have liked to stipulate for the provision of copies of the Cabinet minutes, but the Singapore Delegation argued that the 1957 Conference had limited the information to be provided to matters affecting the United Kingdom's interests and responsibilities. Paragraph (*b*) of section 18 (1) is the compromise finally agreed upon.

The United Kingdom Commissioner is entitled by the Constitution to immunity from suit and legal process, to inviolability of residence, official premises and archives, and to privileges similar to those accorded to envoys of foreign states. As regards precedence, the 1957 Conference merely agreed that he " would be accorded the precedence appropriately due to him in view of his constitutional responsibilities." The British proposal at the 1958 Conference that his precedence should be specifically included in the Constitution was abandoned; but it was agreed that there should be an exchange of letters to state that the United Kingdom Commissioner should be accorded an " official precedence appropriate to his status and functions and, in particular, that his precedence should be senior to, and different from, that of representatives in Singapore of other Commonwealth and foreign countries."

The Executive

The posts of *ex officio* Ministers are abolished.[23] Part IV of the Constitution (ss. 20–33) provides for an Executive consisting of the Cabinet (taking the place of the Council of Ministers), the Prime Minister (taking the place of both the Chief Minister and the Chief

[23] s. 116.

Secretary), other Ministers and Assistant Ministers.[24] The Cabinet has the general direction and control of the government of Singapore, including internal security but not defence or external affairs (*infra*), and is collectively responsible to the Assembly. The Yang di-Pertuan Negara, acting in his discretion, appoints as Prime Minister a member of the Assembly who, in his judgment, is likely to command the confidence of the majority of the Assembly. He appoints the other Ministers on the advice of the Prime Minister, from among members of the Assembly. Assistant Ministers may be appointed on the advice of the Prime Minister from among Members of the Assembly, to assist Ministers in the discharge of their duties and functions. If the Yang di-Pertuan Negara, acting in his discretion, is satisfied that the Prime Minister has ceased to command the confidence of the Assembly, he is to declare the office of Prime Minister vacant; except that he may, again at his discretion, dissolve the Assembly instead if requested by the Prime Minister to do so. Other Ministers lose their office if the office of Prime Minister becomes vacant or their appointment is revoked by the Yang di-Pertuan Negara on the advice of the Prime Minister. The Prime Minister presides at meetings of the Cabinet, which is summoned only by his authority.

Sections 30 and 31 constituting the office of State Advocate-General are worthy of special comment. The problem is well put by the Reid Commission which advised on the Constitution of the Federation of Malaya: "In some Commonwealth countries the Attorney-General holds a political office. In others the political functions usually exercised by a political Attorney-General are exercised by a Minister of Justice or Minister of Law, while the Attorney-General (or Advocate-General) exercises the more professional functions of giving independent legal advice to the government, representing the government in the courts, and perhaps assuming responsibility for public prosecution. On the whole we prefer the latter. In the United Kingdom the political and professional functions of the Law Officers are conventionally kept distinct and the latter are not regarded as within the jurisdiction of the Cabinet. It would be difficult to keep the functions distinct in a country exercising responsible government for the first time; and it is significant that India, Pakistan and Ceylon have all preferred the non-political Attorney-General." [25] The 1957 Singapore Conference agreed that the office of Attorney-General should be discontinued, and his functions distributed as follows: (i) the ministerial responsibility for departments at that time assigned to

[24] *Cf.* Federation of Malaya Independence Order in Council, 1957, Art. 43; Ghana (Constitution) Order in Council, 1957, ss. 7, 8.

[25] *Report of the Federation of Malaya Constitutional Commission, 1957*, Col. No. 330, para. 127.

the *ex officio* Attorney-General should be transferred to an elected Minister; (ii) his remaining functions, except those relating to prosecutions, should be transferred to an official holding the office of Permanent Secretary to the department dealing with legal matters; and (iii) a new office should be created with the title State Advocate-General, in whom would be vested the existing responsibilities of the *ex officio* Attorney-General relating to prosecutions. Section 30 of the Constitution accordingly provides that there shall be a State Advocate-General, appointed by the Yang di-Pertuan Negara on the advice of the Prime Minister from among persons who are qualified to be judges of the Supreme Court. He may be appointed for a specified period; otherwise he holds office until he attains the age of fifty-five years. He may be removed from office on the advice of the Prime Minister, but only for inability to discharge his functions or misbehaviour and with the concurrence of a tribunal consisting of the Chief Justice and two other Supreme Court judges. His remuneration is charged on the Consolidated Fund, and the terms of his service may not be altered to his disadvantage during his continuance in office. The State Advocate-General is given power by section 31 to institute and undertake, to take over and continue, or to discontinue, criminal proceedings in any civil (*i.e.*, non-military) court; and in the exercise of these powers he is expressly not subject to the direction or control of any other person.[26] As agreed at the 1958 Conference, the person holding the office of State Advocate-General may also hold the office of Permanent Secretary for departments dealing with legal matters.

The Legislative Assembly

The composition, powers and procedure of the unicameral Legislature are contained in Parts V and VI of the Constitution (ss. 34–63). There are no longer any *ex officio* or nominated members. The new Legislative Assembly, which was opened on July 1, 1959, is enlarged to fifty-one elected members. The Speaker is elected by the Assembly, either from among non-ministerial members or from among persons who are not members but who are qualified to be so. He has no casting vote, but if he is an elected member of the Assembly he has an original vote. The Speaker's salary is charged on the Consolidated Fund, and may not be diminished during his continuance in office. It was agreed at the 1957 Conference that the existing Speaker, who was in fact the first Speaker appointed under the Rendel Constitution, should be invited to remain in office for at least one year under the

[26] *Cf.* Federation of Malaya Independence Order in Council, 1957, Art. 145; Ghana (Constitution) Order in Council, 1957, s. 15.

new Constitution. The validity of elections and certain other questions as to membership are to be decided by the Supreme Court.

To be qualified for election to the Assembly, a person is required by section 40 of the Constitution to be a citizen of Singapore, and to be adequately proficient in speaking, reading and writing at least one of four languages, *viz.*, English, Malay, Mandarin or Tamil. The Singapore Legislative Assembly Elections (Amendment) Ordinance, 1959, amending the main Elections Ordinance (Ch. 53 of Rev. Ed.), requires that a candidate shall have been born in Malaya or shall have resided in Singapore for at least eight of the preceding ten years, and shall be resident in Singapore at the date of his nomination. Among the disqualifications for membership contained in section 41 of the Constitution are voluntary allegiance to or employment by a foreign State or Power; holding any public office; and being a party to a government contract, notice of which has not been published in the *Gazette*. The elections held in 1959 were also governed by the Singapore Colony (Electoral Provisions) Order in Council, 1958, which disqualified from election to the first Assembly under the new Constitution persons who were imprisoned for an offence against the Sedition Ordinance, or who were detained for subversion under the Preservation of Public Security Ordinance, 1955. The Singapore Delegation at the 1958 Conference objected strongly to the inclusion in the Constitution of a condition barring persons detained for subversive activities from participating in the first Assembly. Mr. Lennox-Boyd insisted on the restriction, but said it would be incorporated in the separate instrument that would in any event be necessary to provide for elections to the first Assembly.

The Clerk of the Assembly is appointed by the Yang di-Pertuan Negara, acting in his discretion, but after consulting the Speaker and the Public Service Commission. He may only be removed by the Yang di-Pertuan Negara acting in his discretion after consulting the Speaker, following a resolution supported by not less than two-thirds of all the members of the Assembly.

All debates and discussions in the Assembly are to be conducted in the English, Malay, Mandarin or Tamil languages; but the reports and minutes are to be in English.[27] This provision is contained in section 49, which the Assembly has no power to amend. Money Bills may only be introduced on the recommendation of the Yang di-Pertuan Negara, signified by a Minister. The Yang di-Pertuan Negara gives his assent to Bills by signature. He may, however, be advised by the United Kingdom Commissioner to reserve Bills affecting defence or external affairs for the Royal pleasure (*infra*); and, as

[27] *Cf.* Federation of Malaya Independence Order in Council, 1957, Art. 152.

agreed at the 1957 Conference, the Crown may disallow laws relating to Singapore Government stock. As is usual when a Colony is first granted self-government, the power of the Assembly to regulate its own privileges is limited to privileges that do not exceed those of the House of Commons.

There must be a session of the Assembly at least once every year, and twelve months must not intervene between sessions. The maximum life of the Assembly is five years. If the office of Prime Minister becomes vacant the Yang di-Pertuan Negara must dissolve the Assembly when he is satisfied, acting in his discretion, that there is no member likely to command a majority. He may at any time dissolve the Assembly if advised by the Prime Minister to do so; but he is not bound to dissolve on the Prime Minister's advice unless he is satisfied, acting in his discretion, that in tendering that advice the Prime Minister commands a majority of the Assembly.

The franchise was previously enjoyed by those persons resident in Malaya who were citizens of the United Kingdom and Colonies under the British Nationality Act or who had been born in the Federation of Malaya, Sarawak, North Borneo or Brunei.[28] The creation of a Singapore citizenship (*infra*) has enabled the franchise to be extended, while confining it to the new class of citizens. The Singapore Legislative Assembly Elections (Amendment) Ordinance, 1959, provides for "compulsory" voting. If a person entitled to vote does not do so, his name is expunged from the electoral register. He may apply for his name to be restored to the register: then, if he satisfies the Registration Officer that he has a good and sufficient reason for not having voted, his name is to be restored without penalty; otherwise, his name will be restored on payment of a penalty of $5. The use of motor-vehicles at elections, except for the owner and his family, is made by the same Ordinance an illegal practice. The wearing of badges and symbols on polling day is prohibited, except by a candidate indicating his affiliation to a political party. Canvassing on polling day is also prohibited by the Ordinance.

The general power of the Legislative Assembly to make laws "for the peace, order and good government of Singapore" is not formally limited, but the agreement reached at the 1957 Conference concerning the protection of Malay and other minority interests in a predominantly Chinese Singapore is expressly confirmed in the preamble to the Constitution Order in Council. This recites "that it shall be the responsibility of the Government of Singapore constantly to care for the interests of racial and religious minorities in Singapore, and in particular that it shall be the deliberate and conscious policy of the

[28] Singapore Legislative Assembly Elections Ordinance, 1954, s. 5.

Government of Singapore at all times to recognise the special position of the Malays, who are the indigenous people of the Island and are in most need of assistance, and, accordingly, that it shall be the responsibility of the Government of Singapore to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language." Anything less would prejudice the eventual merger of Singapore with the Federation of Malaya.

Citizenship of Singapore

Citizenship is not dealt with in the Constitution, but is left to local legislation by arrangement with the United Kingdom. The franchise was previously confined to citizens of the United Kingdom and Colonies, except that it was extended on grounds of sentiment and expediency to residents in Singapore (other than British subjects) who were born in the Federation of Malaya, Sarawak, North Borneo or Brunei.[29] This excluded a large number of immigrants, mostly Chinese, who for one reason or another had not taken the opportunity to become naturalised. The Rendel Constitutional Commission were told by representatives of the Chinese Chamber of Commerce that, while the resident aliens they represented would be ready to accept exclusive allegiance to the Crown as "citizens of Singapore," they found it difficult to become "British subjects, citizens of the United Kingdom and Colonies" since they had no connection with the United Kingdom other than allegiance to the Crown, and they considered that their national status should depend wholly on their connection with Singapore. It was not possible without United Kingdom legislation for a non-self-governing Colony to create its own citizenship to have effect outside the Colony, and it would have been beyond its terms of reference for the Rendel Commission to recommend the amendment of the British Nationality Act, 1948. The Commission therefore contented itself by pointing out that the description "British subject, citizen of the United Kingdom and Colonies" might well become inapplicable "in any territory where constitutional progress reaches a point when the enactment of legislation affecting local citizenship within the Commonwealth becomes possible." [30]

The independence scheme put forward by Mr. Marshall at the 1956 Conference included provision for the creation of "nationals of Singapore," and that point was agreed by Mr. Lennox-Boyd. The 1957 Conference worked out the arrangements whereby

[29] Legislative Council Elections (Amendment) Ordinance, 1948; Singapore Legislative Assembly Elections Ordinance, 1954, s. 5.
[30] *Constitutional Commission, Singapore* (1954), paras. 19–22.

Singapore legislation would provide for "citizens of Singapore" and the British Nationality Act would be amended.

The Singapore Citizenship Ordinance, 1957, as amended,[31] provides that there shall be a status known as "the status of a citizen of Singapore," which may be acquired by birth, descent, registration or naturalisation. Persons born in Singapore before or after the operative date are citizens by birth. A person born outside Singapore before or after the operative date is a citizen by descent if at the time of the birth his father is, or would if alive at the operative date be, a citizen by birth; provided that if the person is born after the operative date his birth is duly registered within one year. A person born in the Federation of Malaya or a citizen of the United Kingdom and Colonies who has resided in Singapore for two years, and satisfies the Minister that he is of good character, is entitled to apply for citizenship by registration. The Minister may by order extend this right to a citizen of any country, other than the State of Singapore, for the time being included in section 1 (3) of the British Nationality Act, 1948, or of the Republic of Ireland. A woman may apply for registration if she is or has been married to a citizen of Singapore. Citizenship by registration is also open to any other persons who have resided in Singapore for eight years immediately preceding the operative date, provided they apply within two years of that date. The Minister has a discretion to refuse an application without assigning any reason, but before refusing he must refer the case to an advisory committee.

Citizenship by naturalisation may be acquired by any person of full age who satisfies the Minister that he is of good character, that he has resided in Singapore for at least eight of the preceding twelve years, including the preceding year, and that he intends to reside permanently in Singapore. A person who intends to reside permanently in Singapore may also apply for naturalisation after three years' full-time or four years' part-time service in the armed forces of Singapore. A citizen by registration or naturalisation is required to take the oath of allegiance to the Crown and loyalty to Singapore. A citizen of a foreign country must, before he can become a citizen of Singapore by registration or naturalisation, renounce his rights under any foreign nationality or citizenship and all loyalty to any foreign State.

A citizen of Singapore who is also a citizen of another country may by declaration renounce his citizenship. The citizenship of a person who has (otherwise than by marriage) voluntarily acquired

[31] Singapore Citizenship (Amendment) Ordinance, 1958; Singapore Citizenship (Amendment No. 2) Ordinance, 1958; Singapore Citizenship (Amendment) Ordinance, 1959.

the citizenship of a foreign country may be declared to be terminated. A citizen by registration or naturalisation may be deprived of his citizenship if it was obtained by fraud; or if the citizen has shown himself to be disloyal to Her Majesty or to Singapore, or has unlawfully traded with the enemy, or has been sentenced in any country to imprisonment for not less than two years, or has resided abroad continuously for seven years unless he has been in the service of the Singapore Government or of an international organisation of which Singapore is a member or unless he has registered annually in the prescribed manner. Before a person may be deprived of his citizenship, however, he has the right to have the case referred to a committee of inquiry consisting of a chairman, who must be a person qualified to be a judge, and two other members appointed by the Minister.

The State of Singapore Act, 1958, s. 1 (1), amends section 1 (3) of the British Nationality Act, 1948 [32] (which specifies the countries whose citizens are by virtue of that citizenship British subjects or Commonwealth citizens), by adding the State of Singapore. The Singapore Citizenship (Amendment) Ordinance, 1959, provides that the status of British subject shall be enjoyed in Singapore by citizens of Singapore, citizens of the United Kingdom and Colonies, and citizens of any country other than the State of Singapore for the time being included in section 1 (3) of the British Nationality Act, 1948; and that any person having that status may be known in Singapore as a British subject or as a Commonwealth citizen.

Internal Security Council

The retention by the United Kingdom of responsibility for defence and external affairs (*infra*), while full responsibility for maintaining internal law and order and preventing subversion is transferred to the Singapore Government, raises the crucial problem of the interrelation between internal security and external defence. Mr. Marshall's scheme for sovereign independence, submitted to the 1956 Conference, allowed for vesting in the United Kingdom for the time being responsibility for the external defence of Singapore. He suggested a Defence Council in which the two Governments would be equally represented, the chairman to be the United Kingdom representative with no casting vote. Since a proposal was to be lost if the voting was equal, the representatives of either Government could veto the Defence Council's decisions. Mr. Lennox-Boyd's counter-proposals, rejecting sovereign independence, included a Defence and Security Council, in which the High Commissioner as chairman would have a casting

[32] As amended by the Federation of Malaya Independence Act, 1957.

vote. This Council would be consultative and advisory only, but the High Commissioner would have some reserve of authority to ensure that necessary action was taken. Mr. Marshall, still insisting on independence, contended that the question of the defence of Singapore by itself did not arise: the real question in issue was the use of Singapore for the defence of wider Commonwealth interests. He would agree to a purely advisory Defence and Security Council for a transitional period of six years, but if defence installations were threatened by internal instability, the British Government could exercise no powers except the extreme power of suspending the Constitution and taking over the government. The Secretary of State insisted on the retention by the Crown of some legislative power by Order in Council in relation to external defence and external affairs, exercisable after a report by the Defence and Security Council. Mr. Marshall thought this might be acceptable (subject to review after two years) if the chairman were a person to be appointed by the United Nations Organisation or a Malayan appointed by the Government of the Federation of Malaya. But as the chairman was to have a casting vote, the exercise of these powers would be removed from the discretion of the United Kingdom Government whose representatives would always be liable to find themselves in a minority. The British Government could not transfer the powers and retain the responsibility. Mr. Lennox-Boyd was willing to consider subjecting the exercise of power to legislate by Order in Council to the approval of the House of Commons, but by that time it was obvious that Mr. Marshall no longer commanded the support of the Singapore Delegation.

The agreement reached at the 1957 Conference on these points in the context of "internal self-government" is contained in Part VII (ss. 64–71) of the Constitution. This provides for an Internal Security Council to consult on all questions of policy relating to the maintenance of public safety and public order in Singapore, to maintain the efficiency of all organs of the Singapore Government which are concerned with internal security, and to ensure equal access by the Governments of the United Kingdom and of Singapore to the relevant services and information. "Internal security" is not defined in the Constitution: the Council determines its own competence, and such a determination cannot be questioned in any court. The Internal Security Council consists of the United Kingdom Commissioner and two others appointed by him; the Prime Minister and two Ministers appointed by him; and a representative of the Government of the Federation of Malaya.[33] The United Kingdom

[33] The first representatives appointed were: *United Kingdom*, Mr. H. T. Bourdillon (a deputy United Kingdom Commissioner) and the General Officer Commanding

Commissioner is the chairman, but he has no casting vote, so that the balance in the Council is held by the Federation representative. On the other hand, the Council may make *decisions* for the maintenance of the internal security of Singapore, and the Singapore Government is *obliged* to act in accordance with such decisions. In default the Yang di-Pertuan Negara, if so advised by the chairman, is to act, and an order so made has the force of law. It has been recorded in correspondence since the new Constitution came into force that the Council is the final arbiter in the making of detention orders for subversion.

Meetings are called by the chairman, either when requested by the Prime Minister or at the chairman's discretion, normally at intervals of not more than one month; and an endeavour must be made to reach agreement without voting: but the courts cannot inquire into the question whether the Council has complied with its constitutional procedure (s. 68). The Federation representative is to be given a reasonable opportunity to seek instructions from his Government before a vote is taken, and he is to have access to all information relating to internal security which is made available by the Government of Singapore to the Government of the United Kingdom. The Federation Government have agreed that their representative will regularly attend meetings of the Council, and will participate fully in its work; and that reasonable notice will be given if they intend to withdraw their representative.[34] If at any time there is no Federation representative, the Council is to continue to meet, but as a consultative body only (s. 70).

Appointments to the offices of Commissioner of Police, Deputy Commissioner of Police and Director of the Special Branch of the Police are to be referred by the Public Service Commission to the Internal Security Council, who may refer them back once to the Commission for consideration.[35] The Internal Security Council has two Joint Secretaries, one appointed by the chairman and the other by the Prime Minister.

Defence and External Affairs

There has never been any question but that the United Kingdom Government must for the foreseeable future retain responsibility for defence[36] and external affairs, and this is provided for by Part VIII

Singapore Base District; *Singapore*, Minister for Home Affairs and Minister for National Development; *Federation of Malaya*, Minister for External Affairs.

[34] *Exchange of letters between the Government of the United Kingdom and the Government of the Federation of Malaya*, December 1958 (Cmnd. 620).

[35] s. 82.

[36] Though Mr. David Marshall preferred to regard the Singapore Base as a matter exclusively of Commonwealth defence ("external defence") and not for the protection of Singapore.

(ss. 72–74) of the Constitution. "Defence" and "external affairs" are not defined,[37] but the Internal Security Council has power in certain circumstances to decide that a matter falls not under these heads but under "internal security" (*infra*). For the discharge of this responsibility, and for the fulfilment and protection of its Commonwealth and international obligations and interests, the United Kingdom Government has the right to occupy and use bases and installations in Singapore, and is entitled to the necessary facilities. Diplomatic immunity attaches to such bases and installations and to the official staff and archives of any necessary agencies. It was agreed at the 1958 Conference that a number of subsidiary matters would be recorded in an exchange of letters between the Secretary of State and the Chief Minister. Thus the United Kingdom services are permitted to retain the lands they already occupied for defence purposes, and have the right to acquire further land by agreed constitutional means. Further, the Anglo-Malayan Agreement on External Defence and Mutual Assistance[38] is to serve as a model for resolving questions relating to the security and policing of military bases and installations. A number of the causes of friction which were brought to the notice of the Rendel Commission have now, it is hoped, been amicably settled. For example, it has been agreed that the Services will pay a contribution in lieu of rates and in respect of the use of roads by Service vehicles; and also that the Services should be bound by labour and social legislation affecting their civilian employees.[39]

A safeguard for the discharge of the United Kingdom's responsibilities is provided by section 74 of the Constitution which states that the United Kingdom Government may request the Singapore Government to act or to refrain from acting in a specified manner; and the Singapore Government must *comply* with such request, unless the Internal Security Council decides (on the question being put to it by the Singapore Government) that the matter is one of internal security and not of defence or external affairs. In default, the Yang di-Pertuan Negara, if advised by the United Kingdom Commissioner to do so, is to make an Order which will have the force of law. Further, the United Kingdom Commissioner may, after informing the Singapore Government of his intention, require the Yang di-Pertuan Negara to *reserve* for the Royal pleasure Bills which he thinks would interfere with defence or external affairs; but, again, if the Singapore

[37] The Secretary of State put tentative definitions of "external defence" and "external affairs" before the 1956 Conference: see Cmd. 9777, Appendix 7. And *cf.* "Trade and Cultural Relations," *infra.*

[38] (1957) Cmnd. 263.

[39] See *Constitutional Commission, Singapore,* 1954, paras. 130–136; (1957) Cmnd, 147, Appendix C.

Government thinks the matter is one of internal security and not of defence or external affairs, the question may be put for decision to the Internal Security Council.

As regards trade and commerce, the Singapore Delegation to the 1956 Conference would have separated these from the remaining aspects of external affairs and retained them for the Singapore Government. The 1957 Conference agreed that authority over trade and cultural relations with other countries should be *delegated* to the Government of Singapore. Hence section 73 of the Constitution provides that responsibility for trade and cultural relations is delegated to the Singapore Government, " acting with the assent of the Government of the United Kingdom," and that responsibility for other matters relating to external affairs may be similarly delegated. The reason for this delegation formula is that it is impossible to create an " international person " responsible only for certain specific fields of external affairs of any one territory; accordingly, so long as the United Kingdom Government remain responsible in international law for the external affairs of Singapore, they can be held ultimately responsible for any agreements made by the Singapore Government.[40] At the 1958 Conference it was agreed that the trade and cultural relations to be delegated to the Singapore Government should follow exactly the definitions framed at the 1957 Conference. These cover agreements of purely local concern with the Federation of Malaya, Indonesia, Sarawak, North Borneo and Brunei; trade agreements with other countries relating solely to the treatment of goods; agreements involving membership of international organisations which Singapore is entitled to join; and the arrangement of cultural, trade or commercial visits, but not permanent or temporary representation. The Singapore Government is to keep the United Kingdom Government informed of any such negotiations, which must be modified if they conflict with the United Kingdom's international policy or defence interest.[41]

The Public Services

A Public Service Commission with executive power was established by an Ordinance of 1956. These provisions are replaced by Part IX (ss. 75–86) of the Constitution,[42] on the lines agreed at the 1957 Conference for an independent advisory Commission. The Public Service Commission, which is to have a Malayan-born chairman, is to be appointed by the Yang di-Pertuan Negara on the advice of

[40] Cmnd. 147, paras. 33–36.

[41] Cmnd. 147, Appendix B.

[42] *Cf.* Federation of Malaya Independence Order in Council, 1957, Part X; Ghana (Constitution) Order in Council, 1957, ss. 50, 51.

the Prime Minister. The question of the removal of a member of the Commission for inability or misbehaviour must be referred to a tribunal consisting of the Chief Justice and two other judges of the Supreme Court. The appointment, promotion and dismissal of public officers generally is vested in the Yang di-Pertuan Negara, acting in accordance with the advice of the Commission; but the dismissal or punishment of a public officer in connection with the exercise of any judicial function requires—as does the removal of the State Advocate-General (s. 30) or the Director of Audit (*infra*, s. 103)—the concurrence of a judicial tribunal similar to that referred to above. The appointment of the three chief officers of Police must, as we have seen, be submitted to the Internal Security Council. Pensions of public officers are charged on the Consolidated Fund.

The Malayanisation of the public service, now virtually complete, has involved undertakings with regard to conditions of service of "expatriate" civil servants who continue in office, and compensation for those who are prematurely retired.

The Judicature

Part X (ss. 87–94) of the Constitution[43] follows the principles agreed at the 1957 Conference. There is to be a Supreme Court, consisting of a Chief Justice and puisne judges whose offices may not, without their consent, be abolished during their continuance in office. The Chief Justice is appointed by the Yang di-Pertuan Negara on the advice of the Prime Minister. Puisne judges are appointed by the Yang di-Pertuan Negara on the advice of a Council consisting of the Chief Justice, the puisne judges and (unless he is himself a candidate) the State Advocate-General. The normal retiring age is sixty-two. Their salary is charged on the Consolidated Fund, and their terms of office may not be altered to their disadvantage during their continuance in office (s. 92).

A judge of the Supreme Court may be removed from office only for inability (whether arising from infirmity of body or mind or any other cause) or for misbehaviour (s. 91 (3)). The initiation of the question of removal in the case of the Chief Justice comes from the Prime Minister, and in the case of the other Supreme Court judges from the Chief Justice after consulting the Prime Minister. The Yang di-Pertuan Negara must then appoint an investigating tribunal consisting of persons who hold or have held superior judicial office in some part of Her Majesty's dominions; and if that tribunal recommends that the question of removal should be referred to the

[43] *Cf.* Federation of Malaya Independence Order in Council, 1957, Arts. 122–125; Ghana (Constitution) Order in Council, 1957, ss. 54–57.

Judicial Committee of the Privy Council, he must request that the question be so referred (s. 91 (5)). Finally, if the Judicial Committee advises Her Majesty that the judge ought to be removed, the Yang di-Pertuan Negara must remove him (s. 91 (4)). This provision for reference to the Judicial Committee follows the recent Constitutions of the West Indies, Nigeria and Kenya.[44] It may be noticed that as regards judges of the Supreme Court of the Federation of Malaya, the Reid Commission recommended the requirement of an address by a two-thirds majority of each House of Parliament.[45] It was decided, however, that a judicial tribunal would be a better safeguard, though the Privy Council would not be appropriate for the Federation as it advises Her Majesty and its advice is made operative by Order in Council.[46]

In the appointment of the subordinate judiciary and other legal officers (other than the State Advocate-General) the Yang di-Pertuan Negara acts on the advice of a Legal Service Commission. The 1957 Conference envisaged the augmentation of the Public Service Commission with the Chief Justice as chairman; but at the 1958 Conference this was found not to be appropriate. Section 93, therefore, provides for a separate Legal Service Commission consisting of the Chief Justice (president), the chairman and not more than two other members of the Public Service Commission, a judge of the Supreme Court and the State Advocate-General.

Finance

Little was said about finance at the various Constitutional Conferences, except that it was always understood (as is stated in Mr. Lennox-Boyd's outline proposals to the 1956 Conference) that with the abolition of *ex officio* Ministers, the portfolio of the Financial Secretary would be transferred to an elected Minister of Finance. When responsibility for finance is transferred to a territory acquiring self-government for the first time, problems arise similar to those affecting the prosecuting functions of the former *ex officio* Attorney-General, problems which are met in this country by the appointment of an independent official, the Comptroller and Auditor-General. Sections 101–103 of the Constitution[47] accordingly provide for a Director of Audit, to be appointed by the Yang di-Pertuan Negara on the advice of the Prime Minister after the latter has consulted

[44] See J. C. McPetrie, "The Constitution of the West Indies" (1959) *Public Law*, 293, 304–305.

[45] The method adopted by the Ghana (Constitution) Order in Council, 1957, s. 54 (3).

[46] (1957) Col. No. 330, paras. 125–126; Cmnd. 210, para. 33.

[47] *Cf.* Federation of Malaya Independence Order in Council, 1957, Arts. 105–107; Ghana (Constitution) Order in Council, 1957, ss. 61–62.

the Public Service Commission. The Director audits the accounts of all government departments and offices, of the courts and of the Legislative Assembly. He reports to the Yang di-Pertuan Negara, who is to lay the reports before the Assembly.

The salary of the Director of Audit is charged on the Consolidated Fund, and his terms of service may not be altered to his disadvantage during his continuance in office. He normally holds office until he reaches the age of fifty-five. If the Prime Minister, or the chairman of the Public Service Commission after consulting the Prime Minister, considers that the Director ought to be removed for inability or misbehaviour, the Yang di-Pertuan Negara is required to refer the matter to a tribunal consisting of the Chief Justice and two other Supreme Court judges, and must, if the tribunal so recommends, remove him. A person who has been Director of Audit is not eligible for any other public office.

The remainder of Part XI consists largely of provisions describing normal financial procedure, which (except as regards the Consolidated Fund and the Public Debt) can be amended by the Legislative Assembly.

Constitutional Amendment

The State of Singapore Act, 1958, s. 1 (2), takes away the power of the Crown to legislate for Singapore after the appointed day by Order in Council under the British Settlements Acts, 1887 and 1945, and the Straits Settlements (Repeal) Act, 1946, except for the purpose of revoking or amending any such existing Order in Council. Section 1 (3) of the Act provides that the Constitution Order (here referred to as "the Constitution") may authorise the revocation or amendment of any of its provisions in any manner specified therein; and where the revocation or amendment is authorised to be done by Order in Council, such Order is to be made by statutory instrument and to be laid before Parliament. Otherwise, the provisions of the Constitution may only be revoked or amended by Act of Parliament.

A general power of revocation or amendment by Order in Council is conferred by section 104 of the Constitution, but (except as regards suspension of the Constitution, *infra*) only with the concurrence of the Singapore Government.

The Legislative Assembly by section 105 has power, if not less than two-thirds of all the members vote in favour, to revoke or amend certain sections of the Constitution specified in the Third Schedule. These are: section 23 (ministerial oath),[48] section 24

[48] But not s. 58 (Oath of Allegiance by members of Assembly).

(presiding in Cabinet), section 25 (validity of Cabinet proceedings), section 34 (as regards composition of Legislative Assembly), sections 35–38 (Speaker), sections 39–45 (membership of Assembly), section 46 (Assembly staff), section 48 (standing orders), section 50 (presiding in Assembly), section 51 (validity of Assembly proceedings), section 52 (quorum), section 54 (introduction of Bills), sections 96–99 (financial procedure),[49] and the relevant parts of section 1 (interpretation).

Suspension of the Constitution

Mr. Marshall was willing to include in the draft Independence Bill he submitted to the 1956 Conference a power on the part of the United Kingdom Government during a transitional period to suspend the Constitution of Singapore if the deterioration of internal security threatened the efficacy of external defence installations or if the Singapore Government contravened the Constitution. This power to suspend (and, if necessary, to replace) the Constitution—modified by the substitution of "external defence or external affairs" for "external defence installations"—was part of the Secretary of State's 1956 proposals that formed the basis of the 1957 Conference. At the latter Conference Mr. Lennox-Boyd indicated that, if it ever became necessary to exercise the suspending power, the office of Yang di-Pertuan Negara would be maintained, and the latter would then act on the advice of the United Kingdom representative. Mr. Lim Yew Hock's attitude was that the suspension of the Constitution and arrangements to be made thereafter did not concern the Singapore Delegation.

Section 106 accordingly provides that the Constitution may be suspended in whole or in part by Order in Council if the United Kingdom Government is satisfied that the situation in Singapore is such as to threaten its ability to discharge its responsibilities for defence and external affairs, or that the Singapore Government has acted in contravention of the Constitution. Provisions for the government of Singapore during such suspension may be made by Order in Council, which may also modify any provisions of the Constitution that are not suspended. Laws may then be made for Singapore by Order in Council, or the law-making power may be delegated to another authority. The suspension continues until it is revoked by Order in Council. Moreover, during suspension the Constitution may not only be amended but revoked and replaced by Order in Council.

[49] But not s. 95 (Consolidated Fund), s. 100 (Public Debt), or ss. 101–103 (Director of Audit).

In case of urgency, the United Kingdom Commissioner may be instructed by the United Kingdom Government to assume by Proclamation the government of Singapore himself, and to exercise legislative and executive functions, pending the making of an Order in Council suspending the Constitution. The question whether the United Kingdom Commissioner has acted in accordance with such instructions may not be inquired into by any court.

Prospect

No definite term was set for the duration of the Rendel Constitution, but in fact it was expected to last about four years, and this—in spite of strains and stress, and thanks largely to Mr. Lim Yew Hock's good sense and moderation—is what it did. At the general election held on May 30, 1959, the People's Action Party (P.A.P.), led by Mr. Lee Kuan Yew, won forty-three out of the fifty-one seats in the Legislative Assembly, although they received only 54 per cent. of the votes cast. Nearly 90 per cent. of the electorate voted. Mr. Lim Yew Hock's hastily reconstituted Singapore People's Alliance won only four seats, and the United Malay Nationalist Organisation (U.M.N.O.)—a partner in Mr. Lim Yew Hock's Government—three seats. The new Assembly consists of thirty-three Chinese, ten Malays, seven Indians and one Eurasian. Mr. Lim Yew Hock, who was himself re-elected by defeating Mr. David Marshall in his constituency, tendered his Government's resignation on June 1, and the Governor invited Mr. Lee Kuan Yew to form a Government under the new Constitution. Mr. Lee, a very fluent speaker, is a young Chinese who graduated in law at Cambridge. His P.A.P. is a left-wing party, which describes itself as "non-Communist" rather than anti-Communist. Before accepting office, Mr. Lee was committed to demanding the release of eight members of his party detained under the Preservation of Public Security Ordinance. Sir William Goode, on the advice of the remaining *ex officio* Ministers, avoided a stalemate by ordering their release. On June 3 he became Yang di-Pertuan Negara, and Mr. Lee Prime Minister, under the new Constitution. The first Cabinet consisted of nine members—the Prime Minister, the Deputy Prime Minister, and the Ministers for National Development, Health, Finance, Labour and Law, Culture, Home Affairs, and Education. Of these, six were Chinese, one a Malay, one a Ceylonese by birth, and one a Eurasian. They included graduates of Oxford, Cambridge, London and Melbourne.

The Yang di-Pertuan Negara's "speech from the throne" at the opening of the new Legislative Assembly on July 1 stated that the future of Singapore lay ultimately "in reuniting with the Federation

of Malaya as a state in an independent country," and that the P.A.P. Government stood for " an independent democratic, non-Communist, socialist Malaya." Here we may recall Mr. Lennox-Boyd's words at the 1956 Conference when, referring to the responsibilities reserved to the United Kingdom as being exercisable in the last resort " to save Singapore from Communism," he said that the arrangements he proposed were not necessarily permanent, but would provide an ultimate reserve of safety " until it was possible to see whether the union of Singapore and Malaya, in which context Her Majesty's Government have always hoped Singapore would find her full independence, might come about." [50] On the other hand, " subversion " was defined in the Yang di-Pertuan Negara's speech as any political activity designed to further the aims and interests, not of the people of Singapore, but of foreign Powers, and by " foreign Powers " the P.A.P. Government meant " not just Russia and China, but also America and Formosa, and the Western *bloc*." The five-year plan announced by the P.A.P. includes the development of industries to bring about a change from a trading to a productive economy; the development of agriculture and fisheries; further technological training; a more Asian emphasis in school instruction; and the emancipation of women.

The future of the State of Singapore depends, it need hardly be said, on a number of uncertain factors, most of which are outside the control of its Government. They include Asian politics, especially the activities of Communist China, and world maritime trade. The threatened flight of capital has been arrested; but the war against the terrorists on the mainland of Malaya continues, and the Federation Government still look with suspicion on the preponderating Chinese element in Singapore as possible adherents to the Federation. If one thing depends more than anything else on the goodwill of the Singapore Government, it is the manner in which they co-operate in the next few years in the delicate machinery of the Internal Security Council.

[50] (1956) Cmd. 9777, p. 24.

CURRENT SURVEY

PAGE

United Kingdom 74

Commonwealth and Dependent Territories 106

This digest which has been compiled by the Editor and G. J. Borrie, Barrister-at-Law, covers the period from October 1, 1959, to December 31, 1959.

UNITED KINGDOM

Courts

Judicial pensions

The Judicial Pensions Act, 1959 (8 Eliz. 2, c. 9) received the Royal Assent on December 17, 1959. Section 1 specifies the amount of pension of holders of certain high judicial offices. Section 2 provides for a retiring age for holders of such judicial offices of 75. Section 3 provides that existing judges may elect that the foregoing provisions apply. Section 4 makes special provision for the former holders of other judicial offices. Section 5 provides that the rate of pension of a Lord Chancellor shall be £5,000. Section 6 makes provision against double pensions. Section 7 provides for increasing pensions granted before the commencement of the Act. Section 8 provides for the repeal of the proviso to section 1 (1) of the Judges' Remuneration Act, 1954. Section 9 provides for consequential amendments. Section 10 is an interpretation section. Section 11 contains financial provisions.

Legal aid

Advisory committee. The report has been published of the advisory committee (Chairman: Viscount Bridgeman) upon the financial provisions of the Legal Aid and Advice Act, 1949, and the Legal Aid (Assessment of Resources) Regulations, 1950 (Cmnd. 918).

Costs. Order 65, r. 27 (41) of the Rules of the Supreme Court gives jurisdiction to review a taxation as between a solicitor and his legally aided client on the application of the solicitor. *Per* McNair J. "There is . . . much to be said for the view that, unless there is a statutory provision to the contrary, the court has inherent jurisdiction to secure that the solicitor as an officer of the court is remunerated properly and no more for the work he does as a solicitor."

A solicitor took out a summons to review a legal aid taxation as between himself and his legally aided client. The summons was served on the Law Society. *Held*, that there was jurisdiction under Ord. 65, r. 27 (41) for the judge to hear such a summons, the possibility of which is inherent in an order for taxation under regulation 18 (3) (*b*) of the Legal Aid (General) Regulations, 1950, and, being an incident of the relationship of solicitor and client, was preserved by section 1 (7) (*a*) of the Legal Aid and Advice Act, 1949: Sutton *v.* Sears [1959] 3 W.L.R. 791; [1959] 3 All E.R. 545, McNair J.

Statistics

Scotland. The civil judicial statistics, for 1958, relating to the House of Lords, the Court of Session, Sheriff Courts and other civil courts, Licensing

Courts, certain legal and public departments and Bankruptcy have been published (Cmnd. 850).

Crown Liability

Authorised Government Departments

The Treasury have published a list of Authorised Government Departments and the names and addresses for service of the person who is, or is acting, for the purposes of the Act as, solicitor for such departments, in pursuance of section 17 of the Crown Proceedings Act, 1947. This supersedes the previous list.

Crown servants

Dismissibility. Regulations for employment made by a Government Department under letters patent cannot oust the right of the Crown to dismiss at pleasure, at any rate if the letters patent do not give authority to do so.

A civilian employee at a War Office outstation signed, on entering his employment, a statement that he understood he would be serving under conditions laid down by the War Department (Outstations) Civilian Staff Regulations, 1950. By regulation 437 an employee had to be given notice on discharge. The employee brought an action for wrongful dismissal. *Held*, that though the regulations were at least analogous to a contract of service, they could not, as they purported to do, oust the Crown's right to dismiss at pleasure. For, even if this could be done by letters patent, the letters patent under which the regulations were made gave no authority to do so. Accordingly, the employee had no right to complain if he was dismissed without notice: Riordan *v.* War Office [1959] 1 W.L.R. 1046; [1959] 3 All E.R. 552, Diplock J.

Government Functions and Appointments

Inspectorate

Fire services. The report has been published of H.M. chief inspector of fire services (counties and county boroughs, England and Wales) for 1958 (Cmnd. 844).

Ministers' functions

Appointments, dissolutions and transfers. The functions of the Government relating to aviation and aircraft production have been combined under a single Minister known as the Minister of Aviation (formerly Minister of Supply). Civil aviation functions have been transferred to this Minister from the Minister of Transport (formerly Minister of Transport and Civil Aviation) (S.I. 1959 No. 1768).

An Order has been made restoring to the War Office functions relating to the supply of equipment, ammunition and other munitions which were transferred from the War Office to the Ministry of Supply in 1939, and restoring to the Air Ministry the parallel functions (other than the production and supply of aircraft) which were transferred from the Air Ministry to the Ministry of Aircraft Production in 1940, and transferred in turn from the Ministry of Aircraft Production to the Ministry of Supply in 1946 (S.I. 1959 No. 1827). The Minister of Aviation has been authorised to exercise these functions concurrently with the War Office and the Air Ministry (S.I. 1959 No. 1975; see also 612 H.C. Deb. *5–6*, October 30, 1959; 613 H.C. Deb. 657–675, November 12, 1959; 219 H.L. Deb. 754–782, November 19, 1959).

An Order has been made transferring to the War Office the functions of the Ministry of Aviation (previously Ministry of Supply) under the Gun Barrel Proof Act, 1868, which were transferred to the Ministry in 1947, and the functions conferred on the Ministry by the Gun Barrel Proof Act, 1950 (S.I. 1959 No. 1828).

An Order has been made transferring to the Minister of Labour the functions of the Minister of National Service (S.I. 1959 No. 1769). The Ministry of National Service has been dissolved (S.I. 1959 No. 1970; 613 H.C. Deb. 655–656, November 12, 1959).

A Minister for Science has been appointed and an Order has been made transferring to him (a) certain functions under the Atomic Energy Act, 1946, the Radioactive Substances Act, 1948, and the Atomic Energy Authority Act, 1954, now vested in the Prime Minister; and (b) the powers and duties of the Lord President of the Council in respect of the following organisations, the Committees of the Privy Council: Agricultural Research Council; National Institute for Research in Nuclear Science; National Research Development Corporation; Nature Conservancy; Council for Scientific and Industrial Research; Committee for Agricultural Research; Committee for Medical Research; Committee for Nature Conservation; Committee for Overseas Research; Committee for Scientific and Industrial Research (S.I. 1959 No. 1826; 612 H.C. Deb. *6*, October 30, 1959). On November 3, 1959, the Prime Minister described the arrangements for answering questions in the House of Commons on subjects falling within the responsibility of the Minister for Science (612 H.C. Deb. 854–858). On December 9, 1959, the Minister for Science explained, in the House of Lords, the principal functions of his Ministry (220 H.L. Deb. 193–205).

An Order has been made transferring to the Minister of Transport certain Admiralty functions relating to the control of ship construction (S.I. 1959 No. 1829; 614 H.C. Deb. 463–516, November 25, 1959).

Education. Volume 1 of the report of the Central Advisory Council for Education, England (Chairman: Sir Geoffrey Crowther), on the educational needs of boys and girls aged fifteen to eighteen, has been published by the Ministry.

Health. Part II of the report of the Ministry for 1958, being the annual report of the Chief Medical Officer, has been published (Cmnd. 871).

Post Office. The report and commercial accounts for 1958–59 have been published (Cmnd. 870).

Science. The annual report of the Advisory Council on Scientific Policy, for 1958–59, has been published (Cmnd. 893).

On December 14, 1959, the Minister of Health, as representing the Minister for Science, stated that the Government had decided to set up a committee to examine the nature, sources and effects of the problem of noise and to advise what further measures could be taken to mitigate it (615 H.C. Deb. 1020–1022).

Monetary system

The report has been published of the Committee on the Working of the Monetary system (Chairman: Lord Radcliffe) (Cmnd. 827; for debates see 614 H.C. Deb. 574–706, November 26, 1959; 219 H.L. Deb. 500–576, November 11, 1959).

Research

The report and statement of accounts of the National Research Development Corporation for 1958–59 have been published (H.C. 38 of 1959–60).

Telephone tapping

On December 3, 7 and 16, 1959, the House of Commons debated the circumstances in which the police, in the course of criminal investigations, listened to a telephone conversation with the consent of one of the parties concerned. Subsequently the Solicitor to the General Medical Council learned of the existence of a record of this conversation from the party concerned and

subpoenaed the police to produce it. The Home Secretary did not claim privilege for this record (614 H.C. Deb. 1378–1390; 615 H.C. Deb. 38–40; 615 H.C. Deb. 1523–1602). The matter was considered in the House of Lords on December 9 and 17, 1959 (220 H.L. Deb. 171–172, 529–535).

See also PARLIAMENT (below, p. 98).

HIGHWAYS

Access

The plaintiffs were the owners of a garage with means of access to the highway. The defendant highway authority proposed to obstruct the means of access by constructing a street refuge at the point where it joined the highway. *Held*, granting a declaration that the defendants had no power to act, (1) that section 45 (1) of the Road Traffic Act, 1956, did not apply since the refuge was not to be sited in the carriageway; (2) that the refuge would not be an "alteration" of the street within section 149 of the Public Health Act, 1875; (3) that the refuge would obstruct the plaintiffs' access to the highway, since in this connection this must mean access to the carriageway: CHING GARAGE *v.* CHINGFORD CORPORATION [1959] 1 W.L.R. 959; [1959] 3 All E.R. 175, Lord Parker C.J.

Private street works

A local authority resolved pursuant to section 6 (1) of the Private Street Works Act, 1892, to execute certain street works and that the cost should be borne by the frontagers on the basis of degree of benefit. Plans having been prepared and the necessary notices served, the local authority resolved to change the basis of apportioning the cost to one of frontage. On an objection by a frontager the justices rejected his objection. On appeal, it was contended that the local authority had no jurisdiction to pass the second resolution, which was a nullity. *Held*, (1) that if the second resolution was a nullity, the objections were a nullity as was the hearing before the justices, therefore the justices had no jurisdiction to decide the objection, the only remedy being for the frontager to apply for a prerogative order; (2) that by passing the second resolution the local authority were abandoning the first resolution and were not invoking the amending provisions of section 11 which probably was not apt for changing the basis of apportionment: WILSON *v.* WREXHAM CORPORATION [1959] 3 All E.R. 674, D.C.

Roads

Debate. On November 4, 1959, the House of Lords debated road and rail communications (219 H.L. Deb. 333–420).

Report on Roads in England and Wales for 1958–59 has been published (H.C. 42 of 1959–60).

HOUSING

Debate

On December 2, 1959, the House of Lords debated the housing situation (219 H.L. Deb. 1070–1154).

Requisition

For the purpose of determining the rate of contribution payable by the Minister to a local authority in respect of any deficit incurred by the local authority in connection with a requisitioned house, under section 10 (1) of the Requisitioned Houses and Housing (Amendment) Act, 1955, the material date, when the owner becomes entitled to receive compensation, is the date of acceptance by the owner of the requisitioned property of the invitation by the local authority, under section 4 (1) of the Act.

On June 6, 1955, the right to possession of a requisitioned dwelling-house occupied by a licensee of the Minister of Housing vested in a local authority pursuant to section 1 of the Act of 1955. On January 28, 1956, the local authority served on the owner of the house a notice pursuant to section 4 (1) of the Act inviting him to accept the licensee of the house as a statutory tenant in consideration of the payment of compensation. On March 23, 1956, that offer was accepted by the owner and the local authority's right to retain possession of the house ceased on April 2, 1956, when the licensee became the statutory tenant of the owner. On May 2, the local authority paid the compensation to the owner. *Held*, that compensation was payable, under section 4 (2), at the date when the owner accepted the local authority's invitation to accord the status of a statutory tenant to the licensee; accordingly, the date of the acceptance of the invitation was the date when payment of the compensation fell to be made for the purposes of section 10 (1), and the local authority was entitled to contribution at the rate of 100 per cent. under section 10 (1) (*a*): East Ham Corporation *v.* Ministry of Housing and Local Government [1959] 1 W.L.R. 1013; [1959] 3 All E.R. 508, Danckwerts J.

Inquiries

Transport

Air. The reports have been published of the inquiries on (a) the accident to Hermes 4, G–ALDV on April 1, 1958 (C.A.P. 157); (b) on the accident over Nettuno, Italy, to Viscount G–ANHC and F.86E Jet Fighter No. 19839 on October 22, 1958 (C.A.P. 158).

Railway. The report has been published on the derailment on May 1, 1959, at Slough station (dated August 19, 1959).

Tramway. The report has been published on the collision and fire on January 28, 1959, at Glasgow (dated July 15, 1959).

Local Government

Children

Particulars have been published of the children in care of local authorities in England and Wales in March 1959 (Cmnd. 914).

Finance

Grant. An Order has been made which (a) increases the aggregate amount of the general grants payable under Part I of the Local Government Act, 1958, to the councils of counties and county boroughs in England and Wales and the Council of the Isles of Scilly for the years 1959–60 and 1960–61; and (b) varies certain of the matters prescribed by the General Grant Order, 1958, in relation to the distribution of those amounts. For 1959–60 the increase is from £393m. to £402m. and for 1960–61 from £414m. to £429m. (S.I. 1959 No. 2162). An accompanying report by the Minister of Housing and Local Government stated that account had been taken of the new Burnham award, of all other known factors affecting the level of costs, prices and remuneration, and other pay awards (H.C. 36 of 1959–60; for debate, see 615 H.C. Deb. 1515–1522, December 16, 1959).

Rating and valuation. The following decisions have been reported on the interpretation of section 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955: *Waterson* v. *Hendon Borough Council* [1959] 1 W.L.R. 985; [1959] 2 All E.R. 760; *Royal College of Nursing* v. *St. Marylebone Borough Council* [1959] 1 W.L.R. 1077; [1959] 3 All E.R. 663, C.A.; *Working Men's Club and Institute Union* v. *Swansea Corporation* [1959] 1 W.L.R. 1197; [1959] 3 All E.R. 769, C.A. The London Library is not a "society

instituted for purposes of science, literature, or fine arts exclusively" within section 1 of the Scientific Societies Act, 1843, so as to exempt it from rates.

The London Library was founded in 1841 for the purpose of supplying a library, embracing every department of literature and philosophy, from which books might be taken by members for perusal at home. The bulk of the subscribing members were scholars, students and university professors. While the bulk of the income was provided by the annual subscriptions, a certain amount was received each year from cash donations, legacies and gifts of books. *Held*, dismissing an appeal from the Lands Tribunal, that the premises occupied by the library were liable to rating because they failed to comply with two of the five conditions required for exemption by section 1 of the Act of 1843, namely, that the society should be "instituted for the purposes of . . . literature . . . exclusively," and that the society should be "supported wholly or in part by annual voluntary contributions . . .": LONDON LIBRARY *v.* CANE [1959] 3 W.L.R. 929; [1959] 3 All E.R. 726, C.A.

A return of rates and rateable values published by the Ministry of Housing and Local Government shows that the average rate levied in England and Wales for 1958–59 was 18s. 4d. compared with 18s. for 1957–58. The rateable value of all property at April 1, 1958, was £610,240,000 compared with £601,873,000 at April 1, 1957, an increase of 1·4 per cent. Receipts of local authorities from rates in 1958–59 are provisionally estimated at £548,000,000, compared with £532,000,000 in 1957–58. The product of a 1d. general rate for 1958–59 is estimated at £2,442,445 compared with £2,378,862 in the previous rating year. The amount of rates estimated to be collected per head of population was £12 2s. as against £11 13s. in the previous year, an increase of 3·8 per cent. There were rate increases in 900 areas, no change in 359, and decreases in 208. 566 of the increases and 187 of the decreases were less than 5 per cent. Detailed figures from each local authority area show that the most highly rated urban authority during the year under review was Bedwas and Machen, Monmouthshire, with a rate of 32s. in the pound. Bournemouth, with a rate of 12s. 4d. was again the lowest rated borough in England and Wales. The lowest rated urban districts were Walton and Weybridge, Surrey, and Tickhill, Yorkshire West Riding, each with a rate of 14s. 6d. Walton and Weybridge also had a rate of 14s. 6d. in 1957–58, but for Tickhill it represents a decrease of 2s. 6d. (H.M.S.O. 75–3–0–59).

Liability

A rural district council liable to repair a drain is liable for damage caused by its mere neglect to do so.

An award made by commissioners under a local enclosure Act imposed on the surveyor of the parish the duty to maintain a certain drain. The rural district council, as the surveyor's successor, failed to repair the drain, which overflowed and damaged the land of A, who sued personally, and the Attorney-General also sued at his relation for damages. *Held*, that the council was liable, even though it was guilty only of non-feasance, and, on the true construction of the enclosure Act and award, A was entitled to a personal action: ATT.-GEN. *v.* ST. IVES RURAL DISTRICT COUNCIL [1959] 3 W.L.R. 575; [1959] 3 All E.R. 371, Salmon J.

London

The Minutes of Evidence of the Royal Commission on Local Government in Greater London have been published for Days 25–46 (H.M.S.O. 73–35–25, 26, 27, 28, 29, 30, 31, 33, 35, 36, 38, 39, 40, 42, 44, 46).

Police

Garratt v. *Eastmond.* Various questions relating to this case were raised in the House of Commons on November 5, 1959 (612 H.C. Deb. 1196–1199). A motion of censure against the Home Secretary was debated and subsequently

withdrawn on November 18, 1959; in the course of this debate the Home Secretary promised a general inquiry into police matters (613 H.C. Deb. 1239–1303; see next paragraph).

Royal Commission. The Prime Minister announced in the House of Commons on December 16, 1959, the terms of reference of a Royal Commission to inquire into police matters in Great Britain. The Royal Commission would be under the chairmanship of Sir Henry Willink, Q.C., Master of Magdalene College, Cambridge, and the names of the other members of the Commission would be announced shortly. The terms of reference are:

"To review the constitutional position of the police throughout Great Britain, the arrangements for their control and administration and, in particular, to consider: (i) the constitution and functions of local police authorities, (ii) the status and accountability of members of police forces, including chief officers of police, (iii) the relationship of the police with the public, and the means of ensuring that complaints by the public against the police are effectively dealt with, and (iv) the broad principles which should govern the remuneration of the constable, having regard to the nature and extent of police duties and responsibilities and the need to attract and retain an adequate number of recruits with the proper qualifications" (615 H.C. Deb. 1454–1457; see also 1644–1646, December 17, 1959).

On December 16, 1959, the House of Lords debated the organisation and administration of the police (200 H.L. Deb. 456–481).

Powers

A gift in a will to a parish council "for the purpose of providing some useful memorial to myself" is not a good charitable gift.

A testator gave his residuary estate, worth about £20,000, to a named parish council "for the purpose of providing some useful memorial to myself." *Held*, that the gift failed and the residue fell to be distributed as on an intestacy. It was not an absolute gift, but something in the nature of a trust was imposed. The authority in section 268 of the Local Government Act, 1933, for the council to accept gifts for "any local public purpose" was not confined to charitable purposes. Nor were the extra powers conferred by section 4 (1) of the Physical Training and Recreation Act, 1937, of providing land and buildings for athletic, social or educational objects rendered retrospectively charitable by the Recreational Charities Act, 1958. The gift was not the same as a gift for the benefit of the inhabitants of the parish as the memorial might be useful to other persons. Nor was it one of the anomalous class of public "object" trusts without ascertainable beneficiaries which may yet be valid if no question of perpetuity arises.

Semble, such trusts cannot be treated as valid powers: *Re* ENDACOTT, CORPE *v.* ENDACOTT [1959] 3 W.L.R. 799; [1959] 3 All E.R. 562, C.A. (distinguishing *Re Hooper* [1932] Ch. 38; *Re Drummond* [1914] 2 Ch. 90).

The power contained in section 15 of the Police Act, 1946, to purchase land compulsorily "for the purpose of any of the functions of the police authority," includes power to purchase land for the purpose of providing houses for police officers.

By a compulsory purchase order, a police authority made an order for the purchase of land adjoining a divisional police headquarters to provide houses for police officers. Objections were made to the order by local residents who applied to quash the order contending that the power to acquire land compulsorily under section 15 of the Act of 1946 for "the functions of the police authority" did not include compulsory acquisition to house the police. *Held*, that the provision of houses for the police was among the functions of the police authority under section 15, and the authority was entitled to make the order: HAZELDINE *v.* MINISTER OF HOUSING AND LOCAL GOVERNMENT [1959] 1 W.L.R. 1155; [1959] 3 All E.R. 693, C.A.

Section 181 (3) of the London Government Act, 1939, provides a speedy remedy for a local authority to recover expenses incurred in repairing damage without having to consider who is blameworthy in that respect. They are entitled under this subsection to recover from the person whose hand or vehicle has actually come in contact with, and damaged, their property.

W. was driving his car along a road, when another car collided with his car, driving him into a street refuge. The local authority made a complaint that W. had failed to pay the cost of repairing the damaged refuge. The justices, dismissing the complaint, found that the driver of the other car was solely responsible for the collision and for the damage to the refuge. *Held*, allowing an appeal by the local authority, that, pursuant to section 181 (3) of the Act of 1939, the council was entitled to recover the cost of repairing the refuge from W.: KENSINGTON BOROUGH COUNCIL *v.* WALTERS [1959] 3 W.L.R. 945; [1959] 3 All E.R. 652, D.C.

See also GOVERNMENT FUNCTIONS AND APPOINTMENTS (above, p. 75), HIGHWAYS (above, p. 77), HOUSING (above, p. 77), TOWN AND COUNTRY PLANNING (below, p. 103).

MENTAL HEALTH

Statute

The Mental Health Act, 1959 (7 & 8 Eliz. 2, c. 72) received the Royal Assent on July 29, 1959. The Act repeals the Lunacy and Mental Treatment Acts, 1890–1930, and the Mental Deficiency Acts, 1913–1938, and provides one legal code to cover both mental illness and mental deficiency instead of the two codes previously existing. It removes the requirement for treatment of persons of unsound mind in designated hospitals, thus enabling hospital authorities to permit any type of mental patient to be received in any kind of hospital. Informal treatment in hospital for mental disorders replaces the formalities previously applicable to voluntary treatment, and compulsory powers of detention or guardianship provide a new system regulating the use of compulsory powers which will be exercisable only where no other appropriate methods are available. It also provides for offenders who are mentally disordered being sent to hospital or placed under guardianship as a result of criminal proceedings.

The Mental Health Act, 1959 (Commencement No. 1) Order, 1959, brings into operation certain provisions of the Mental Health Act, 1959, to the extent necessary to repeal the provisions of the Lunacy Act, 1890, which prevent hospitals, licensed houses and nursing homes from receiving mentally ill patients informally without powers of detention (1959 S.I. No. 1676).

See also TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS (below, p. 104).

MONOPOLIES AND RESTRICTIVE PRACTICES

Account of progress

In an address on September 3, 1959, to the annual meeting of the British Association at York, the Registrar of Restrictive Trading Agreements reviewed the progress made under the Restrictive Trade Practices Act, 1956, and discussed whether the intentions of the Act were being fulfilled. The following is a summary of his observations.

The registrar stated that at August 7, 1959, the register contained 2,200 agreements. The parties to 380 of them had been warned by the registrar that he intended to start proceedings; following this warning, the parties to 250 had informed him that they had abandoned or were abandoning their agreements. The parties to another 350 "unwarned" agreements had also abandoned or were abandoning them, making over 600 abandoned in all. (The corresponding total of abandoned agreements at January 1, 1959, was estimated at about 150.) Six cases had come to trial. This figure would have been much higher if the parties to many agreements had not decided (sometimes when the case was nearly ready for trial) to end rather than to defend

them. The rate of abandonment had increased fast, showing that the court's judgments had a tremendous effect upon it. The registrar expected that a high proportion of the 130 cases in which proceedings were now pending would not come to trial. For example, in April and May, he had sent warning letters to the parties to 100 agreements and 60 of these had already been abandoned. There were 1,450 agreements on which no action had yet been taken; but over 1,050 were closely connected with cases already started. A single judgment by the court might affect as many as 100 of these agreements and could often settle a dozen or more. Of the other 400 agreements, as many as 200 might qualify for removal from the register under section 12 of the Act as being of no substantial economic significance. Action on these would take time, since the registrar had to consider their practical effects as well as their formal content. The last 200 consisted mainly of newly registered agreements, old ones which should have been registered earlier, and some involving formidable problems of registration. Summing up, the registrar said that the picture was, first, a small number mainly of complicated and difficult cases contested before the court; and, secondly, a large number of agreements abandoned before reference to the court or before the trial, some of them no less important than those which had been contested.

The registrar took it that in passing the Act the Government and Parliament had intended that agreements of a registrable kind should not continue unless some good and substantial reason from the point of view of the public could be shown to justify their continuance, and to outweigh any harm they might do. Much had been made of the point that the parties had to demonstrate this. But this principle had been laid down by Parliament and it involved nothing exceptional or contrary to the principles of United Kingdom law when cases came before the court. The onus of proof in law lay on him who asserted the affirmative. It was quite normal that the parties should have to prove any benefits which they thought their agreements conferred and that the registrar should have to prove any harm which he asserted they did. By laying down with some precision the only grounds on which parties could establish that their agreements were not contrary to the public interest, the Act might appear to be limiting the arguments which they could use to defend them. In its judgment on the first case which it tried—that of the Chemists' Federation—the court had said: "We should make it clear that we are not . . . required to answer this question (whether it is contrary to the public interest that proprietary medicines should be sold only through chemists) as a matter of policy. . . . Our task is the ordinary task of a court of law to take the words of the Act according to their proper construction to see if upon the facts proved the case falls within them." The Act did not assume either that what was good for the manufacturer was bad for the consumer or, conversely, that what was good for industry was good for the public. It was concerned with the effect rather than the purpose of restrictions. Commenting upon the *Chemists' Federation* case, the registrar referred to the fact that although the court had condemned the agreement, many manufacturers of proprietary medicines continued to restrict the sales of their own products to retail chemists. He pointed out that the Act was concerned with agreements, *i.e.*, collective and not individual decisions. It did not attempt to describe how, or to whom, or at what price an individual should sell his goods. That was a matter for his commercial judgment in competitive conditions. The Act was designed to foster those conditions.

The most widely pleaded of the defences which the Act allowed was that the ending of a restriction would deny specific and substantial benefits or advantages to the public as consumers of goods. "Agreements have so far," he said, "failed to pass the scrutiny of the court, not, I think, because of any limitation of the matters which can be put forward in their favour, but because when the facts have been critically examined there has not been established the probability that any substantial benefit would be lost if the restrictions ended, or the detriments due to the restrictions have been found to outweigh

any benefits. Thus, even assuming that the consumer would be injured thereby, all price competition is not likely to degenerate into cut-throat competition in the sense that all manufacturers are selling at prices below their real costs. The manufacturing capacity being preserved may be surplus to real requirements in the long term. So far as co-operative research produces useful results, it need not depend on the existence of a price scheme. Naturally, before the court, an industry presents a united front, but few industries are really to be regarded as a single or homogeneous unit. Thus conditions where a common price results in the continuance of high-cost producers and in low-cost producers working seriously below capacity are not really in the interests of the latter, any more than they are in the interests of the consuming public."

The most important of the other justifications allowed and so far pleaded under the Act were that the ending of a restriction would have a substantial adverse effect on exports, or would lead to serious and persistent unemployment in particular places. In the case of the *Water-Tube Boilermakers' Association*, the court found that the harm done by the agreement was minimal and that the prices quoted by members at home and abroad after an elaborate system of consultation were really competitive and keen. It found also that without the arrangements, members of the association would be deprived of valuable information on market conditions and technical matters, and would, therefore, be less likely to secure export orders, each one of which was substantial. The court accordingly found, for this reason alone, that the agreement as a whole was not contrary to the public interest although it refused to accept any of the other arguments urged in its favour. The unemployment defence was urged in the *Yarn Spinners'* case; and in spite of the formidable difficulties in computing the probabilities, the court found that a case was made by the association. But it took the view that the damage done by the agreement to the public generally and to yarn users outweighed the benefit of preserving employment, and declared the agreement contrary to the public interest. In conclusion, the registrar said that the Act did not appear to him to have precluded the court from considering any arguments which parties had advanced to show that their agreements benefited the public. Whether this meant that the Act was effectively achieving its purpose was a matter for his audience to consider.

The first sitting of the Restrictive Practices Court was on April 25, 1958. The six cases which have been brought to trial before the court up to August 1959 are summarised below. In addition, the court has made Orders with the consent of the parties in twenty-nine undefended cases, declaring them to be contrary to the public interest.

Agreement	Parties	Main Terms of Agreement	Court's Decision
Chemists' Federation	Manufacturing, wholesale and retail chemists	Restricting sale of a wide range of manufacturer members' products via wholesale members to retail chemists only (whether or not members)	Restrictions contrary to public interest
Yarn Spinners' Association	Spinners of cotton yarn	Minimum prices for cotton yarn and common terms and conditions of sale for home and export markets	Restrictions found contrary to public interest. The court accepted that removal of restrictions might cause serious and persistent unemployment in certain areas; but held that the benefit conferred by the restrictions was outweighed by their detriment to the public

Agreement	Parties	Main Terms of Agreement	Court's Decision
British Constructional Steelworks Association	Fabricators	Standard terms of contract	Price-fixing clauses had already been removed from the agreement. The registrar informed the court that the other terms of the agreement had no economic significance
Blanket Manufacturers' Association	Manufacturers of blankets	Recommended minimum prices for certain types of blanket; recommended terms and conditions of sale; recommended minimum wool content for same type of blanket	Restrictions found contrary to public interest, except two: (*a*) A restriction relating to sanctity of contracts which the court found outside their jurisdiction (*b*) The restriction relating to wool content
Scottish Association of Master Bakers and Wholesale and Retail Bakers of Scotland	Bakers in Scotland	Recommended prices for bread	Restrictions found contrary to public interest
Water-Tube Boilermakers' Association	Manufacturers	Agreed tendering	Restrictions not contrary to public interest

(The above summary is based on Commonwealth Survey, C.O.I., September 29, 1959.)

Decisions

As a general rule, price stabilisation, as an alternative to a free market, is not a benefit to the consuming public.

An association of bakers made recommendations to its members as to the minimum price of bread and other bakery products. There was no power to enforce these recommendations but they were, in fact, followed by members. The registrar applied under section 20 (1) of the Restrictive Trade Practices Act, 1956, for a declaration that the restrictions not to offer or supply standard bread except at prices recommended by the association was contrary to public interest. *Held*, that the restrictions were deemed to be contrary to public interest within section 21 (1) and therefore void: *Re* SCOTTISH ASSOCIATION OF MASTER BAKERS' AGREEMENT [1959] 1 W.L.R. 1094; [1959] 3 All E.R. 98.

To bring a restrictive trading agreement within section 21 (1) (*b*) of the Restrictive Trade Practices Act, 1956, it is not necessary to show that the predominant customer is likely to try to enforce unfair terms against the parties to the agreement if it is abrogated. To bring a restriction within section 21 (1) (*f*) it must be shown that the reduction in export trade which would result if the agreement were terminated would be substantial in relation to the total business of the parties to the agreement, not merely in relation to their export business.

The registrar referred to the court a restrictive trading agreement between members of the Water-Tube Boilermakers' Association. The industry making such boilers requires highly scientific and technical knowledge in which rapid advances are constantly being made. Research is important. A boiler designer requires a relatively larger highly skilled staff than is common in industry generally. The industry is concentrated in the hands of eight or nine companies of which six are members of the Association. The present trend of central power-house boilers is towards larger boilers, giving rise in the near future to a few orders for very large boilers, each taking four or five years to erect and costing some millions of pounds. In the home trade the only customer for these boilers is the Central Electricity Generating Board.

On the short-term view the industry has excess capacity but after five or six years the demand is likely to exceed capacity. By rule 5 of the Association's rules, if more than one member proposed to quote a price for a particular job, full details were to be circulated to all members proposing to do so. Each would then prepare a quotation. These would then be reduced to a common basis and then the member with the least work in the country in question over the last five years would be given the opportunity to reduce his quotation to or towards that of the lowest tenderer. No one other than the selected member was allowed to reduce his quotation, and he only once. Where the customer was overseas the members involved exchanged very full information and in choosing the selected member considerable weight was also given to the preference of the customer. *Held*, (1) though the restriction might help members to negotiate fair terms with the Generating Board within section 21 (1) (*b*) though the Board was unlikely to try to enforce unfair terms even if it could, the restriction was too wide for the purpose of preventing it from doing so, applying as it did to dealings with customers other than the Board. (2) But as, if the restriction were abrogated the members would lose export trade forming a substantial part of their whole trade, the restriction was within section 21 (1) (*f*) of the Act and, on the balance of detriment and advantage, ought to be allowed: *Re* WATER-TUBE BOILERMAKERS' ASSOCIATION'S AGREEMENT [1959] 1 W.L.R. 1118; [1959] 3 All E.R. 257, R.P.C.

Section 6 (1) (*a*) (*b*) and (*c*) of the Restrictive Trade Practices Act, 1956, refers to a point of time when a contract is about to be entered into and does not contemplate the case where the contract has already been made.

An association whose members manufactured 70 per cent. of the blankets made in the United Kingdom passed a resolution that " No manufacturer shall agree to the breaking of any contract by reduction of price or other procedure." *Held*, that the resolution did not amount to a restriction within section 6 (1) of the Act of 1956: *Re* BLANKET MANUFACTURERS' ASSOCIATION'S AGREEMENT [1959] 1 W.L.R. 1148; [1959] 2 All E.R. 630, C.A.

NATIONAL HEALTH SERVICE

Debate

On November 19, 1959, the House of Lords debated the hospital service (219 H.L. Deb. 783–868).

Documents

Privilege. Written statements made before any claim has been made, or even adumbrated, are privileged from discovery if they are made in anticipation of any claim which may be made.

The plaintiff sued a hospital board for damages in respect of gas gangrene which developed after an operation. Within ten days of the operation and before the plaintiff even adumbrated a claim the surgeon, senior registrar, house surgeon and nurses involved made written statements, which were immediately sent to the hospital's solicitors. *Held*, that the statements were made in contemplation of litigation and so were privileged from discovery: PATCH *v.* UNITED BRISTOL HOSPITALS BOARD [1959] 1 W.L.R. 955, Streatfeild J.

Health Services Council

Report of the Scottish Health Services Council for 1958 has been published (H.M.S.O. 49–412–0–58).

Remuneration

Royal Commission. The Minister of Health stated on December 7, 1959, that the Commission hoped to present its report in February 1960 (615 H.C. Deb. 13–14).

Status

Medical specialist. Expenses incurred by a part-time specialist in the execution of his duties as an employee of the National Health Service are deductible only if they fall to be deducted under Schedule E of the Income Tax Act, 1952, and its predecessors. This applies to expenses incurred in domiciliary visits to National Health patients and in National Health appointments held as *locum tenens.*

Certain specialists employed part-time by the National Health Service sought to deduct from their taxable incomes expenses incurred in carrying out their duties as officers of their regional hospital boards on the basis that their earnings as such officers were taxable under Case II of Schedule D. Some of the expenses in question were incurred in their own National Health Service appointments in hospitals, some in National Health appointments held as *locum tenens* and some in domiciliary visits to National Health patients. *Held*, that, in each case the earnings arose from an office within Schedule E, and were assessable under that Schedule and accordingly only such deductions could be made as were permitted by that Schedule: MITCHELL AND EDON *v.* ROSS; MITCHELL AND HADDOCK *v.* HIRTENSTEIN; MITCHELL AND MELLERSH *v.* MARSHALL; TAYLOR-GOOBY *v.* TARNESBY; TAYLOR-GOOBY AND JOB *v.* DREW [1959] 3 W.L.R. 550, Upjohn J.

See also TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS (below, p. 104).

NATIONAL INSURANCE

Debate

On March 15, 1959, the House of Commons debated a motion asking leave to bring in a Bill to increase benefits. The motion was defeated (615 H.C. Deb. 1256–1268).

Decisions of the Commissioner and the Tribunal

Vol. II of the reported decisions, covering the period 1953–56, has been published by the Ministry (H.M.S.O. 76–77).

Absence from Great Britain. The claimant, who had resided in England for many years, became incapable of work in July 1957, and went home to Germany for treatment. She said that if she became fit for work, she would return to England, but at March 28, 1958, there was no prospect of her return to Great Britain for an indefinite period. *Held*, that by March 28, 1958, her absence from Great Britain could no longer be regarded as temporary: Decision No. R(S) 5/59.

Claimant was taken ill while travelling from the U.S.A. to Great Britain in an aeroplane belonging to B.O.A.C. On account of engine trouble the plane returned to Newfoundland and he was admitted to hospital there. *Held*, that his incapacity did not begin before he left Great Britain as a British-owned aeroplane flying over the high seas is not part of Great Britain: Decision No. R(S) 8/59.

Being dissatisfied with the medical treatment he had received in Great Britain, claimant went to Germany in October 1957 to seek better treatment. While there he forwarded a claim for sickness benefit for the period January 14, 1958 to February 20, 1958. He had no definite intention of either remaining in Germany or returning to Great Britain or going elsewhere. His prospective continued stay in Germany was of indefinite duration. *Held*, that his absence from Great Britain could not be regarded as temporary: Decision No. R(S) 9/59.

Child's Special Allowance. Claimant divorced her husband in 1951, and a court order for maintenance was made against him in respect of her and her child. He made regular payments until June 1951, when he was discharged from the Army. From then until his death in December 1953 he made three

payments in September 1951 and an aggregate sum of £12 6s. during 1953. *Held,* that a child's special allowance was not payable. The expression " had before his death been contributing " in section 5 (2) (*c*) of the National Insurance Act, 1957, means " had immediately before his death been contributing." If, at the date of death, there had been a temporary and involuntary cessation of contributions, that break could be ignored. The husband had not, in any case, contributed as much as 5s. a week: Decision No. R(G) 5/59.

Claimant's ex-husband was required under a court order to pay £1 5s. per week for her and 10s. and 7s. 6d. respectively for two children. He fell heavily in arrear and £438 was outstanding at his death on October 1, 1957. He served numerous terms of imprisonment, the last ending on November 19, 1955. His payments to December 17, 1956, were very irregular. From that date he paid to February 12, 1957, and for two later periods of three and four weeks respectively the last ending on June 3, 1957. He made no further attempt to pay although employed from April 29, 1957 to July 12, 1957 and August 29, 1957 to September 3, 1957. *Held,* that while looking at the last sixteen weeks alone, it might be inferred that there was a temporary and involuntary interruption of contributions, it was necessary to look at the picture of contributions as a whole and no such inference could be made: Decision No. R(G) 6/59.

Death grant. Death grant would be payable if deceased who went to Germany for treatment and died there would immediately before death have been entitled to sickness benefit. This question depended upon whether her absence from Great Britain was temporary. She had come to England on marriage to an Englishman, remained as a widow and taken up work there. She visited Germany each year and returned on each occasion to Great Britain. *Held,* that death grant was payable. There was no reason to doubt that she had intended to return after treatment and the Minister had agreed that he would have allowed sickness benefit to be paid immediately before her death if she had claimed it: Decision No. R(G) 13/59.

Detention in legal custody. On May 29, 1958, a woman charged with assaulting a police officer was remanded in custody for three weeks for a juridical (*sic*) report. Subsequently she was convicted and conditionally discharged. She then claimed sickness benefit from May 29, 1958 to June 19, 1958. *Held,* that, since she was not undergoing detention at the commencement of May 29, 1958, the first day of her detention in legal custody must be regarded as May 30, 1958. As she was incapable of work on May 29, 1958, she escaped disqualification by reason of regulation 6 (2) of the National Insurance (General Benefit) Regulations, 1948, for the period from May 29, 1958 to June 19, 1958: Decision No. R(S) 7/59.

Extinguishment of right to payment. A retirement pensioner, when cashing the orders in her pension book at monthly intervals, presented her book at the post office for an official to tear out the orders. One order became folded under its counterfoil and this was not discovered until more than six months after the receivable date. *Held,* that the right to the sum in question was extinguished. The relevant regulation is peremptory in its terms and does not admit of any relaxation in these circumstances: Decision No. R(P) 7/59.

Good faith. Claimant went to France on his doctor's advice, shortly after submitting a certificate showing that he would be incapable of work for a further three weeks. He continued to receive benefit as he did not report his absence to the Ministry, and was later disqualified for receiving benefit whilst abroad. On appeal the local tribunal held that he was required to repay the amount overpaid because they were not satisfied that he had acted in good faith in all respects as to the obtaining and receipt of that benefit. *Held,* that it had not been shown that claimant did not act in good faith. Where the Minister has paid benefit pending determination of a claim, the regulation under which requirement to repay has to be considered is Regulation 8 (8) of

the National Insurance (General Benefit) Regulations and unlike Regulation 21 (1) of the National Insurance (Determination of Claims and Questions) Regulations, it places the burden of proof upon those who allege a lack of good faith. The claimant had no specific instruction at any time to report his absence to the Ministry: Decision No. R(S) 3/59.

Holiday. The works at which the claimant was employed had been closed on Trinity Monday for the past ten years owing to shortage of orders following the Whitsun holidays. Trinity Monday was not mentioned in the agreement specifying certain days as agreed holidays. *Held*, that Trinity Monday although not mentioned in the agreement, had become a day of recognised holiday in the case of the claimant: Decision No. R(U) 24/59.

Home confinement grant. The claimant was admitted to a National Health Service hospital on October 12, 1958, confined on the same day, and discharged on October 16, 1958. She contended that in calculating the length of her stay in hospital for the purposes of Regulation 5 of the National Insurance (Maternity Benefit and Miscellaneous Provisions) Regulations, 1954, as amended, the day of admission and the day of discharge should not be counted, and the word "day" in the regulation meant the period of twenty-four hours from the time of confinement, not the period from midnight to midnight. *Held*, that home confinement grant was not payable. Claimant's first contention was untenable and in regard to the second "day" meant the period of twenty-four hours from midnight to midnight: Decision No. R(G) 8/59.

The claimant was admitted in emergency to a National Health Service hospital on August 6, 1958, and confined on the same day. Early on August 9, 1958, her discharge was authorised but arrangements could not be made for transport and for her reception at home on that day and she left the following morning. *Held*, that home confinement grant was not payable. "Discharge" in regulation 5 of the National Insurance (Maternity Benefit and Miscellaneous Provisions) Regulations, 1954, as amended, meant discharge from the accommodation in which the confinement took place. This discharge had not occurred until August 10, 1958: Decision No. R(G) 9/59.

Increase of benefit for children. The claimant made a claim for an increase of unemployment benefit in respect of his two children who were living with their mother, his divorced wife. He was required by court order to pay 15s. a week toward the maintenance of each child, but had made no payment for some ten months. *Held*, that he was not entitled to the increase. In order to show title, since the children were not living with him, he was required by section 6 (3) of the National Insurance Act, 1957, and Regulation 5B of the National Insurance (General Benefit) Regulations, 1948, as amended, to prove that he was contributing to the cost of providing for the children at least 8s. for one child and 3s. 6d. for the other. In fact he was contributing nothing. Effect of the statutory provisions discussed: Decision No. R(U) 25/59.

Leaving voluntarily. The claimant gave notice to terminate his employment. Later, realising that he had acted hastily and foolishly, he tried to withdraw his notice but was not allowed to do so. *Held*, that the period of disqualification should be reduced to one week: Decision No. R(U) 27/59.

Marriage. Man claimed an increase of sickness benefit in respect of a woman to whom he was married in 1929 according to Romany rites. *Held*, that such a marriage is unknown to English law. A ceremony of marriage must conform with the law of the place of celebration. A valid marriage cannot be presumed because of cohabitation and repute where there is cogent evidence to the contrary. Claim disallowed: Decision No. R(S) 4/59.

Claimant went through a ceremony of marriage, but to prevent parental interference, the banns had been published and the ceremony conducted in a name which the parties knew to be false. *Held*, that claimant's marriage

was void and that she was therefore not entitled to a retirement pension by virtue of the man's insurance: Decision No. R(P) 9/59.

Maternity benefit. The claimant had a still-birth in hospital. The gynaecological registrar at the hospital had examined the foetus and stated that the number of weeks of pregnancy was twenty-three, or at most, twenty-five. The claimant's doctor and his partner had examined the claimant at different dates and this evidence, based on the size of the uterus, suggested that the pregnancy had lasted more than twenty-eight weeks. This was inconsistent with the claimant's own statement of the date of the beginning of the last menstrual period and, moreover, she had pre-eclamptic toxaemia which might have caused the uterus to be enlarged. *Held*, that the claimant had failed to prove that she had been confined. The opinion of the gynaecological registrar was to be preferred because, as the claimant's doctor conceded, the appearance of the foetus was a more accurate guide. It was also more consistent with the claimant's statement of the beginning of the last menstrual period: Decision No. R(G) 12/59.

Misconduct. A nineteen-year-old apprentice draughtsman was held to have lost his employment through misconduct. The local tribunal were informed of his trouble with the police but recorded the evidence inadequately. The claimant argued that he was dismissed for misconduct " outside working hours." *Held*, that information before a tribunal should not be withheld from the Commissioner: an explicit statement of what caused the claimant's discharge should have been given. *Held* also, that misconduct outside working hours is not necessarily irrelevant to section 13 (2) (*a*) of the Act. Commissioner comments on the term " industrial " misconduct: Decision No. R(U) 20/59.

Munchausen's syndrome. A long-distance lorry-driver entered various hospitals in different parts of the country complaining of symptoms which indicated disease of the kidney or ureter. He told inconsistent stories about his medical history and on a number of occasions left hospital before investigations were complete. He sometimes left one hospital and entered another on the same day. Investigations and occasional operations disclosed no evidence of disorder. Medical evidence was given that this was a typical case of Munchausen's syndrome. *Held*, that the claimant had not shown that while in hospital he was incapable of work by reason of some specific disease or bodily or mental disablement. His condition was due to a defect of character and a medical assessor agreed with the medical evidence given: Decision No. R(S) 6/59.

Normal idle day. Claimant, who did not normally work on Saturdays, had worked intermittently in the ship repair yards for many years. He claimed benefit for a Saturday during a period when he was without work for fewer than twelve days. *Held*, that " terminated," as used in section 4, relates to " termination without any intention of resuming the relationship of employee and employer on the next available opportunity." In that sense the claimant's employment had not been terminated. *Held*, however, that his employment was " casual " in relation to him and therefore fell to be *treated as* terminated. This was decided by examining his recent employment history, which showed that his employment, when it did occur, lasted only for relatively short periods, and that, when those periods came to an end, he had no certain assurance as to the date on which he would be resuming work. Claim allowed: Decision No. R(U) 16/59.

Claimant had worked in the shipyards for eleven years, but not always for the same employer. Some two years before the day in question he had had two weeks' employment in the building trade. He claimed benefit for a Saturday during a period when he was without work for fewer than twelve days. *Held*, that, as in Decision R(U) 16/59, his employment had not been terminated. *Held*, also, that there was no material distinction between his record of employment and that of the claimant to whom Decision R(U) 16/59

refers. His employment was "casual" in relation to him and fell to be *treated as* terminated. Claim allowed: Decision No. R(U) 17/59.

An intermittently employed shipyard worker claimed benefit for two days of customary holiday which occurred in a period of indefinite suspension lasting fewer than twelve consecutive days. *Held*, that, as in Decision R(U) 16/59, his employment had not been terminated. *Held*, also, that it was irrelevant to find that his employment was "casual." Regulation 7A (3) (*a*) of the Unemployment and Sickness Benefit Regulations allows employment to be treated as terminated, if it is casual in relation to a claimant, for the purposes only of section 4 (1) of the 1957 Act. The claimant was therefore on holiday and was not entitled to benefit: Decision No. R(U) 19/59.

Seasonal workers. A registered disabled person commenced seasonal work some months after a period of non-seasonal work had ended. He had no other employment in the meanwhile. *Held*, that, following the principle stated in Decision R(U) 14/53, as the claimant had had no employment other than seasonal in the three years immediately following the termination of the non-seasonal work that period had to be considered in deciding whether he was a seasonal worker, and not the period of three years commencing with the date on which he first commenced seasonal work. Decisions R(U) 43/52 and 14/53 compared: Decision No. R(U) 28/59.

Share fishermen. A "ripper" fisherman abstained from fishing during conditions of "thick" water. There was evidence that during these conditions ripper fishing is unproductive. "Thick" water persisted for several weeks in 1958, and the Commissioner noted that ripper vessels cannot readily turn to other methods of fishing. *Held*, first, that in view of expert opinion an "absence of fish" was not established. Secondly, *unprofitability* of fishing must be rejected as "any other good cause necessitating abstention from fishing." A prolonged prevalence of "thick" water does not help to satisfy the regulations, which must be read strictly rather than loosely. Earlier decisions re-examined and approved. Appeal disallowed: Decision No. R(U) 22/59.

Trade dispute. Claimant was discharged when he and other workers refused to terminate a meeting which was concerned with their terms of employment and which extended over the meal break into working hours. It was contended on his behalf that his discharge was due to an unreasonable act on the part of the foreman and that a trade dispute did not exist until "hostile action" was taken by one side or the other. *Held*, that such a definition of "dispute" is too narrow; that a trade dispute was in existence at the time of the meeting, and that there was a stoppage of work due to a trade dispute: Decision No. R(U) 21/59.

Because their foreman withheld a sum of money which was due to a fellow-worker by way of income tax rebate nineteen employees left their place of employment in protest. As a consequence the employers closed the site for several weeks. *Held*, that the protest was not connected with "the terms or the conditions of employment" (or the employment or non-employment of any person). Therefore there had not been a "trade dispute." Disqualified for misconduct: Decision No. R(U) 26/59.

The claimant, with others, became redundant and was given notice. A dispute arose regarding the order of discharge. The claimant, by agreement with his employers, left the employment 1½ days before his notice was due to expire and before the stoppage which commenced later the same day. *Held*, that the claimant had lost employment by reason of a stoppage of work which was due to a trade dispute at his place of employment. If he had not foreseen the probability of a stoppage of work, he would have had no reason not to work out his notice: Decision No. R(U) 29/59.

Whether unemployed. (i) The claimant had a normal working week of five full days. He claimed benefit for the Saturday in a week in which he had

worked for 4½ days. *Held*, that, although in that week he had worked *on* the number of days on which he normally worked, he had not worked for that number of days. He had therefore not been employed to the "full extent normal" in his case. (ii) The same claimant's employment was intermittent. In 7½ months during which he had followed it he had had five spells of work, which varied in duration from under two weeks to over six weeks. *Held*, that he escaped the provisions of section 4 (1) of the 1957 Act because his employment was so irregular, and with one exception lasted for periods so short that it was "casual in relation to him": Decision No. R(U) 13/59.

Claimant who normally worked on five days a week (Monday to Friday) was put on short time, working on four days a week only. He then took additional work with a butcher from 7 a.m. to 12 noon on a Saturday. *Held*, that a claimant should be deemed to have been employed to the full extent normal in his case unless the extent of his employment in the week in question has fallen below the normal by at least one hour. On this basis the claimant had not been employed to his full normal extent. In respect of loss of work which is not due to "economic causes" the Commissioner makes a reference to Decision R(U) 33/53: Decision No. R(U) 15/59.

Widow's benefit. A widow pensioner was in part-time employment as a night worker in a hospital. The general pattern of her employment was that she worked on the nights of Thursday/Friday and Friday/Saturday, and then was not required to report for duty until 10.30 p.m. on the following Saturday. She then worked on the nights of Saturday/Sunday and Sunday/Monday and was not required again until the next Thursday night. She was paid weekly on Sundays, but since she was paid at a higher rate for week-end work, her wages varied from week to week. Her widow's pension was payable in advance on Tuesdays. *Held*, that the claimant's earnings must be calculated by reference to her actual earnings in a calendar week and that "calendar week" in section 17 (3) of the National Insurance Act, 1946, as amended, meant the week ending at midnight on Saturday/Sunday: Decision No. R(G) 10/59.

The man with whom a widow was cohabiting left her after a quarrel and went to live in lodgings elsewhere. Later he purported to return as a lodger when he heard that claimant was in financial difficulties. He is still living with her. *Held*, that cohabitation did not continue during the man's absence but that they resumed cohabitation on return of the man as there was no ground for saying that any material change had occurred in their relationship. If the parties, where no marital obligations exist, cease to live together because of a dispute between them cohabitation ceases for the period of absence, even though it may be resumed after a short time: Decision No. R(G) 11/59.

See also TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS (below, p. 104).

NATIONAL INSURANCE (INDUSTRIAL INJURIES)

Decisions of the Commissioner and the Tribunal

Vol. II of the reported decisions, covering the period 1953–56, has been published by the Ministry (H.M.S.O. 76–78).

Accident on way to work. Railway lengthman injured his hand when boarding a regular passenger train. He had signed on at that station and had been instructed to travel by that particular train which was to make a special stop at the site of his work. *Held*, that the claimant had suffered an industrial accident. Decision R(I) 34/57 distinguished: Decision No. R(I) 34/59.

Adjourned hearing. The majority of a local tribunal found that a claimant for special hardship allowance was unfit for his regular occupation, but adjourned the hearing to ascertain the conditions of his post-accident employment. After inquiries, a differently constituted tribunal (to which claimant had consented) disallowed his claim for special hardship allowance on the

ground that he was not incapable of following his regular occupation. *Held*, that the second tribunal was right to treat all questions relevant to the appeal *de novo* irrespective of any conclusion which the first tribunal might have reached on any of these questions: Decision No. R(I) 29/59.

Hospital treatment allowance. Claimant travelled daily from his home to a Rehabilitation Centre 4½ miles away for remedial treatment. There were insufficient beds at the Centre to accommodate him. The Centre had no facilities for out-patients, and he was treated in all respects as an ordinary in-patient except that he went home to sleep. *Held*, that hospital treatment allowance was not payable. The phrase " as an in-patient " refers to a person's status as an in-patient and not to the nature of the treatment he is receiving. " In-patient " defined as a patient who occupies a bed in a hospital as distinguished from an out-patient who comes daily or from time to time to be treated or attended to. This definition of in-patient to be applied under both National Insurance and Industrial Injuries legislation: Decision No. R(I) 27/59.

" Out of and in the course of employment." Claimant slipped and fell on an iron bar suffering a severe blow in the left groin. After an initial feeling of sickness the effects passed off and he continued at work for three weeks. He then consulted his doctor about a swelling which had begun to cause pain. He was certified incapable of work and finally, seven weeks after the accident, a malignant tumour (a necrotic seminoma) of the left testis was removed. *Held*, that the claimant's incapacity did not result from the accident. The weight of medical evidence showed that a seminoma, like a teratoma, is probably never caused by a single blow and that it must anyhow have been developing long before the accident. The only way it could have been aggravated would have been by a blow sufficiently severe to have caused a haemorrhage into it with immediate persistent pain of which there was no evidence. Decision R(I) 37/53 compared. Commissioner draws attention to the necessity for the advice given by a medical assessor at a tribunal hearing to be recorded so that it is available in the event of an appeal: Decision No. R(I) 14/59.

A cook suffered an industrial accident on May 15, 1957, when she fell striking her head and scalding her arm. She continued working despite recurrent headaches until May 26. On May 27 she became incapable of work owing to a cerebral vascular catastrophe causing a hemiplegia. *Held*, that the incapacity from May 27, 1957, did not result from the relevant accident. The evidence shows that the head injury had not resulted in concussion, which is medically defined. A hemiplegia may be due to either a cerebral haemorrhage or a cerebral thrombosis; this one was probably due to a thrombosis. But in either event the delay of twelve days makes it no more than a bare possibility that the accident caused or precipitated the hemiplegia: Decision No. R(I) 15/59.

A miner died from acute haemorrhagic pancreatitis two months after injuring his back and ribs in a fall at work. *Held*, that the death was not the result of the relevant injury: Decision No. R(I) 19/59.

Claimant and his son were employed as rockmen in different parts of the same slate mine. Work was stopped because of an accident in the mine and the claimant was told that his son had been killed. Since his son's death, he had been incapable of work due to nervous debility resulting from shock. He did not hear or witness the accident. *Held*, that the personal injury suffered by the claimant, the shock of being told of the fatal injury to his son, did not arise out of his employment. R(I) 49/52 distinguished: Decision No. R(I) 22/59.

A sedentary worker was sent on a civil defence course which involved markedly greater exertion than usual. He complained of chest pain during the course but completed it. He then returned to his normal duties. About a fortnight later he had a violent chest pain just after he got into bed and was gravely ill. He was admitted to hospital and died of a similar attack fourteen

days afterwards. *Held*, that death did not result from an industrial accident. The chest pain during the course was due to an attack of angina pectoris, which did not cause any personal injury nor did it have any bearing on the development of the violent pain occurring later, which was due to an acute coronary occlusion. Differences between an attack of angina and an attack of coronary occlusion as regards symptoms, clinical signs, pathology and relation to physical effort discussed: Decision No. R(I) 25/59.

The claimant, a watchman, was on duty in his hut about midnight when one of a gang of youths who had been fighting nearby ran into the hut to shelter from the others. Another youth followed and whilst trying to get out of their way the claimant was struck and knocked down, breaking his arm. *Held*, that the accident did not arise out of the employment. The assault did not arise out of some incident occurring in the course of the employment, *e.g.*, a dispute over work, nor could it properly be said that the employment as a night watchman at a site in the streets of Glasgow involved a special risk of assault of this kind. R(I) 41/51 applied; R(I) 21/58 compared and R(I) 62/51 distinguished: Decision No. R(I) 26/59.

A clerk felt a pain in his left leg while stooping to take files out of a cabinet drawer. After he sat down the pain suddenly became severe. Later, he was certified to be suffering from a prolapsed disc. *Held*, on the medical evidence that the claimant did not suffer personal injury caused by accident arising out of and in the course of his employment. The severe onset of pain signified the complete prolapse of an already partially prolapsed disc, which was brought about by some slight (and apparently insignificant) movement while sitting on his chair and not by the stooping. Principles of R(I) 20/56 further explained: Decision No. R(I) 35/59.

The deceased, whose duty lay at and about a tank containing scalding liquid, sat on its edge; an act prohibited but in fact indulged in. He fell asleep and fell into the scalding liquid, sustaining injuries from which he died. *Held*, that whilst it was a rash act to sit upon the edge of the tank, it was not an unnatural act, nor was it so rash as to take him outwith his employment. The act of falling asleep was probably involuntary, and the accident arose out of as well as in the course of his employment. Decision R(I) 68/54 distinguished: Decision No. R(I) 36/59.

Prescribed diseases. A forensic pathologist carried out post-mortem examinations on coroners' cases during the period from July 1950 to September 1955, when he became incapable of work by reason of tuberculosis. In twelve of those cases tuberculosis was referred to in the reports as a cause of, or a condition contributing to, death, and of a further 1,841 examinations carried out by his two colleagues, twenty-one cases were similarly recorded. Medical evidence showed that there was a reasonable inference that during examination of a number of the cases, apart from the thirty-three, a substantial number of bacilli might well have been released. The majority of the autopsies were carried out in the same post-mortem room. The room, which was not of modern construction, had a number of undesirable features which permitted the continued presence of tubercle bacilli in a concentration far in excess of that to which the pathologist would be exposed in the ordinary course of life. *Held*, that by reason of his employment the claimant was exposed to close and frequent contact with a source or sources of tuberculous infection: Decision No. R(I) 12/59.

Claimant was employed as a labourer in a laundry blue mill, handling between three and four tons of mixed blue daily. He shovelled a wet mixture of ultramarine, sodium bicarbonate and dextrin from trucks into hoppers, after the mixture had fallen from the mixer. For the past four years, the mixer had been situated in the room in which the claimant worked. The ingredients were shovelled into the mixer in a dry state by other men, and a certain amount of dust arose from this operation. On analysis, ultramarine was found to contain 0·36 per cent. by weight of hard free silica and 0·32

per cent. by weight of quartz. *Held*, that pneumoconiosis was prescribed in relation to the claimant. His occupation did not involve the working or handling of a dry admixture and even if it did it was doubtful if the mixed blue could be spoken of as silica rock or quartz, as it contained as little as 0·05 per cent. by weight of hard free silica, and the quartz was no more than 0·07 per cent. 0·03 per cent. He was, however, substantially exposed to the dust arising from the handling of ultramarine in its dry state, which was a dry admixture containing silica rock. Decision R(I) 26/55 compared: Decision No. R(I) 13/59.

Claimant who had been employed in the manufacture of Durindone magenta, "Durindone" being the trade name for a group of vat dyes belonging to his employers, claimed disablement benefit for prescribed disease 39. *Held*, that the prescribed disease 39 was not prescribed in relation to the claimant. Durindone magenta is not magenta within the meaning of the Prescribed Diseases Regulations as the two substances are basically different in chemical composition and are regarded in the chemical industry as different in kind: Decision No. R(I) 16/59.

An officer of the National Assistance Board whose duties included visiting persons, some of whom suffered from tuberculosis, contended that he was employed in attendance upon persons suffering from tuberculosis where the need for such attendance arose by reason of physical or mental infirmity. He relied on the fact that health visitors and home helps were quoted in a Ministry of Pensions and National Insurance leaflet as examples of persons so employed. *Held*, that tuberculosis was not prescribed in relation to the claimant. Decisions R(I) 25/54, R(I) 2/55 and R(I) 19/55 followed. The question whether tuberculosis is prescribed in relation to a claimant is a matter for the statutory authorities and could not be influenced by statements in leaflets issued by the Ministry: Decision No. R(I) 18/59.

Before July 5, 1958, claimant was engaged in forging or shaping railway wagon axles by means of a large power-driven hammer. The axles were cast in metal moulds and covered with silica sand to cool off. While they were being forged by the power hammer more silica sand was thrown between the hammer and the casting to prevent sticking. *Held*, that the employment was not a prescribed occupation as set out in paragraph 4 (*b*) (ii) of Part II of the First Schedule to the Prescribed Diseases Regulations. While the hammering did in fact free some adherent siliceous substance, the freeing was merely incidental to and not the object of the operation: Decision No. R(I) 30/59.

A shale breaker worked below ground level in a breaker house a mile away from the shale mine. *Held*, that the claimant did not work "underground in any mine" for the purposes of item 10 (a) in Part II of the First Schedule to the Prescribed Diseases Regulations and that pneumoconiosis was not prescribed in relation to him. Meaning of "underground" as used in this context discussed: Decision No. R(I) 37/59.

Refusal to have operation. A coal hewer suffered an industrial accident to his left knee, as a result of which a small loose piece of bone was broken off the upper end of the tibia. A consultant surgeon advised that the piece of bone could be removed by operation, but the claimant refused to accept this advice. It was conceded that he was incapable of following his regular occupation while the knee remained in its present condition. *Held*, that the claimant's incapacity for his regular occupation did not result from an unreasonable refusal to undergo the operation. An opinion in favour of operation should be given by more than one expert before benefit is stopped, and an improvement must be not merely possible, but probable, before an operation can be reasonably required: Decision No. R(I) 23/59.

Review of decision. Review was sought of a decision of the Deputy Commissioner that a claimant had not suffered personal injury by accident. Since the decision the claimant had been awarded damages in the High Court. *Held*, that the evidence of the claimant's doctor and of a professor, given in the

High Court action, was not "fresh evidence." The doctor's evidence could have been placed before the Deputy Commissioner. The professor had previously submitted written evidence before the Deputy Commissioner, and his further evidence, or any that he could now give, would not be "fresh." *Held*, also that the judgment in the High Court action was itself neither "fresh evidence" nor a "relevant change of circumstances": Decision No. R(I) 11/59.

Special hardship allowance. A miner had an assessment of 8 per cent. for life for the partly relevant condition of "Injury to right knee with internal meniscectomy and pre-existing osteoarthritis." 2 per cent. was offset for the pre-existing arthritis. *Held*, that major part of the disability was due to the accident and was substantial and rendered him incapable of his regular work. Effects of relevant loss of faculty in conjunction with other disabilities discussed: Decision No. R(I) 17/59.

Claimant, who already suffered from osteo-arthritis in both knees, injured his left knee in an industrial accident. A medical appeal tribunal found 10 per cent. disability in both knees. After off-setting 5 per cent. for the pre-existing osteo-arthritis in the left knee, they applied the "paired organs" principle under regulation 2 (5) of the Industrial Injuries (Benefit) Regulations and awarded 15 per cent. for life. There was medical evidence that claimant's incapacity to follow his regular occupation was attributable to the progression of the pre-existing arthritis. *Held*, that on the evidence, notwithstanding the life assessment, special hardship allowance was not payable. Decision R(I) 64/52 followed. Regulation 2 (5) of the Benefit Regulations discussed. Considered that for the purpose of section 14 of the Industrial Injuries Act a pre-existing disability in a paired organ is not required to be treated as if it resulted from the relevant loss of faculty: Decision No. R(I) 20/59.

Claimant had worked as an overhead linesman before suffering an industrial accident. To ensure mobility, his employers had paid him a subsistence allowance throughout the eight years of this employment, though he had lived at home for most of that time. *Held*, that the subsistence allowance was a perquisite annexed to his wages and formed part of his remuneration. R(I) 1/54 distinguished: Decision No. R(I) 24/59.

Claimant was awarded special hardship allowance up to December 3, 1957, for a period of incapacity to follow his regular occupation. His final assessment of disablement benefit terminated on February 20, 1958. After an unsuccessful application for review of the final assessment he successfully appealed to the Medical Appeal Tribunal and was awarded a life assessment from February 21, 1958. On receipt of this decision he made a late claim for special hardship allowance from March 5, 1958. *Held*, that, as the right to special hardship allowance had not been continuous as in Decision R(I) 18/57, a further claim was necessary. Reasonable cause for late claim was accepted. In view of the earlier unsuccessful attempt to get the final assessment reviewed, it was reasonable for the claimant to defer making a further claim until his title to disablement benefit had been re-established: Decision No. R(I) 28/59.

Due to a trade recession in the claimant's regular occupation, his probable earnings in that occupation fluctuated and were at times lower than his earnings in his post-accident employment. *Held*, that: (1) Two distinct questions arise under section 14 of the Act: (a) whether a claimant satisfies the basic qualifications for an increase under section 14 (1) and if he does (b) what is the amount of that increase to be under section 14 (4). (2) Where due to a temporary trade recession in a claimant's regular occupation, his probable earnings in that occupation are lower than his earnings in his existing employment, it does not necessarily follow that his existing employment is of equivalent standard to his regular occupation so as to disqualify him under section 14 (1) though it may justify a temporary cessation of

payments under section 14 (4). (3) In determining whether a claimant satisfies the requirements of section 14 (1) and 14 (4) a broad view should be taken on the best evidence available of probable future trends in his regular occupation and existing employment. (4) Where an award is not made on the grounds that the requirements of section 14 (4) are not satisfied, it is for the claimant to revive his claim when the temporary trade recession in his regular occupation has receded. (5) Applying principles (1), (2) and (3) to the facts of this case special hardship allowance awarded. R(I) 76/52, R(I) 5/53 and R(I) 8/53 considered: Decision No. R(I) 31/59.

The claimant, a collier, received multiple lacerations of the face and shoulders in a shot-firing incident whilst working in a low seam. A medical appeal tribunal found no basis for an alleged traumatic neurosis, and considered 3 per cent. for life covered the disfigurement and any loss of faculty due to any neurosis. *Held*, that the medical appeal tribunal's decision admitted some degree of functional neurosis, and that Decisions R(I) 66/52, 85/52 and 8/56 were distinguishable. The claimant had undergone a terrifying experience and the functional neurosis from which he was suffering (so far as it was attributable to the accident) rendered him incapable of following his regular occupation. R(I) 45/54 compared: Decision No. R(I) 32/59.

On August 16, 1955, a medical board made a final assessment of 5 per cent. to March 14, 1956. On February 28, 1958, the claimant applied for review on the grounds of unforeseen aggravation, and a medical board made a provisional assessment of 5 per cent. from November 28, 1957, to August 28, 1958. The claimant was not likely to be permanently incapable of following his regular occupation. *Held*, that an increase of disablement benefit was not payable. The existence of a period when there was no loss of faculty was fatal to the claim under the " continuous " condition. Effect of Regulation 6A of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations mentioned. Decisions R(I) 25/57 and R(I) 29/58 followed: Decision No. R(I) 33/59.

Nationalised Industries

General

A list has been published of members of public boards of a commercial character as at November 1, 1959, with salaries and allowances, together with a list of those holding more than one appointment (Cmnd. 911).

Airways

Air Transport Advisory Council. The report of the Council for 1958–59 has been published with a statement by the Minister of Transport and Civil Aviation (H.C. 260 of 1958–59).

Guarantees. The Treasury has issued statements of guarantee on loans proposed to be raised by the British European Airways Corporation (H.C. 8 of 1959–60) and the British Overseas Airways Corporation (H.C. 9 of 1959–60).

Report and accounts have been published of the British Overseas Airways Corporation for 1958–59 (H.C. 259 of 1958–59).

Select Committee. The Minister of Transport and Civil Aviation has published the comments by B.O.A.C. and B.E.A.C. on the report of the Select Committee on Nationalised Industries (Reports and Accounts) on the Air Corporations (613 H.C. Deb. *81–87*, November 16, 1959, and *126*, November 17, 1959; see also [1959] P.L. 409).

Atomic energy

The Atomic Energy Act (8 Eliz. 2, c. 5) received the Royal Assent on December 17, 1959. Section 1 increases the maximum number of members of the Atomic Energy Authority. Section 2 makes provision for the Authority to include in their pensions schemes staff of the National Institute for Research

in Nuclear Science. Section 3 provides for expenses incurred as a result of this Act.

See also PARLIAMENT (below, p. 98).

Coal

The Coal Industry Nationalisation (Borrowing Powers) Order, 1959, has been made.

The Coal Industry Nationalisation Act, 1946, s. 26 (as amended by the Coal Industry Acts, 1951 and 1956) provides, *inter alia*, that the Minister of Power may make advances to the National Coal Board to enable them to defray expenditure properly chargeable to capital account and that the aggregate amount outstanding by way of principal in respect of such advances made before August 2, 1961, shall not at any time in any financial year exceed by more than £75m., or such greater sum as the Minister of Power may by order specify for that year, the highest aggregate amount so outstanding at any time during the preceding financial year.

This order specifies the sum of £120m. as the amount of the maximum permitted increase during the financial year which ends on March 31, 1960 (S.I. 1959 No. 1993).

Electricity

Guarantees. The Treasury has issued statements of guarantee on loans proposed to be raised by the North of Scotland Hydro-Electric Board (H.C. 12 of 1959–60), the South of Scotland Electricity Board (H.C. 13 of 1959–60), and the Electricity Council (H.C. 10 of 1959–60).

Powers. 1. References in the Electricity Acts to a line running "above ground" are not limited to lines on the ground. 2. Accordingly a ministerial consent under section 22 (1) of the Electricity (Supply) Act, 1919, to the erection of a line above ground carries with it the right to erect the towers necessary to carry the line in the air above ground. 3. Towers are not included in the expression "electric line" as defined by section 32 of the Electric Lighting Act, 1882. 4. A notice of intention to erect a line served for the purposes of section 22 (1) of the Act of 1919 by the Central Electricity Authority can be relied on by the Central Electricity Generating Board, its successor under the Electricity Act, 1957.

The Minister of Power gave his consent under section 10 (*b*) of the Schedule to the Electric Lighting (Clauses) Act, 1889, to the placing by the Central Electricity Authority of electric lines along a route crossing the defendant's land subject to a condition that the line was to be erected along a red line delineated on a map "or as near as possible thereto, as may be agreed by the owners and occupiers of any land across which the lines may be placed; provided that the Central Electricity Generating Board shall not deviate laterally from the line of the said route to a greater extent than 200 yards." The Authority gave to the defendant notice of intention to place electric lines with three steel towers on his land. The defendant refused his consent and the Central Electricity Generating Board (to which the Authority's functions had been transferred by the Electricity Act, 1957) applied for and received the Minister's consent under section 10 (*b*) of the above Act of 1899 to placing lines in a position different from, but within 200 yards of, the red line referred to in the earlier consent. *Held*, that the Board was entitled to erect the towers and lines in the position indicated in the second consent, even though the defendant had not himself agreed to the course of the line: CENTRAL ELECTRICITY GENERATING BOARD *v.* JENNAWAY [1959] 1 W.L.R. 937; [1959] 3 All E.R. 409, Lloyd-Jacob J.

Gas

Guarantee. The Treasury has issued statements of guarantee in respect of loans proposed to be raised by the Gas Council (H.C. 11 of 1959–60).

Reports and accounts have been published of the twelve Gas Boards and Consultative Councils for 1958–59 (H.C. 286–297 of 1958–59) and of the Gas Council (H.C. 298 of 1958–59).

The associated report of the Minister of Power has also been published (H.C. 299 of 1958–59).

Transport

Debates. On November 4, 1959, the House of Lords debated road and rail communications (219 H.L. Deb. 333–420).

On November 25, 1959, the House of Commons debated British Road Services (614 H.C. Deb. 517–528).

On December 17, 1959, the House of Lords debated British Railways (220 H.L. Deb. 535–625).

Guarantee. The Treasury has issued a statement of guarantee on loans proposed to be raised by the British Transport Commission (H.C. 14 of 1959–60).

See also PARLIAMENT (below, this page).

PARLIAMENT

Accommodation (House of Commons)

The Minister of Works gave a list of the principal recommendations of the Select Committee on House of Commons Accommodation made between 1953 and 1955 which had been or were being carried into effect (615 H.C. Deb. 198–199, December 8, 1959).

Estimates Committee (House of Commons)

Reports. The Select Committee has published its Fifth Report on U.K. Atomic Energy Authority (Production Group and Development and Engineering Group) (H.C. 316–I of 1958–59); also its First Special Report (1959–60 session) on appointment of sub-committees and allocation of estimates (H.C. 25 of 1959–60); also its minutes of proceedings (1958–59 session) (H.C. 317 of 1958–59).

Leave of absence (House of Lords)

The letter written to Peers on the issue of Writs has been published (219 H.L. Deb. 2–4, October 20, 1959).

The First Report from the Select Committee has been published (H.L. (11) of 1959–60).

Members (House of Commons)

The list of Members who took and subscribed the Oath or made and subscribed the Affirmation has been published (612 H.C. Deb. 20–37, October 21, 1959; 39–42, October 22, 1959; 43–44, October 27, 1959).

Nationalised industries

Relationship with Parliament. On November 12, 1959, the Prime Minister said that the Leader of the House proposed to discuss with those concerned, including the Speaker, the relationship between Parliament and the nationalised industries (613 H.C. Deb. 595–598).

Select Committee. The Committee has been appointed for the new session (614 H.C. Deb. 949, November 30, 1959).

See also NATIONALISED INDUSTRIES (above, p. 96).

Offices (House of Lords)

Report. The First Report from the Select Committee has been published (H.L. (18) of 1959–60; 220 H.L. Deb. 86–87).

Opening of Parliament

The Lord Chancellor delivered Her Majesty's Speech to both Houses on October 27, 1959 (219 H.L. Deb. 10–14; 612 H.C. Deb. 48–51).

Parliamentary Commissioner

On November 5, 1959, the Prime Minister was asked if he had considered a memorandum submitted to him in regard to the appointment of a Parliamentary Commissioner after the Scandinavian model for the consideration of individual grievances against administrative or executive action by public authority. The Prime Minister replied that there would be many constitutional and practical difficulties but that he understood that a group of lawyers was to undertake a serious and objective study of the matter and that it would be well to wait until the results of that study were known before coming to any final conclusion (612 H.C. Deb. *68*).

Private Bills

Report has been published of the Joint Committee on Promotion of Private Bills, together with the proceedings of the Committee, Minutes of Evidence and Appendices (H.L. 176; H.C. 262 of 1958–59). The principal conclusion of the report was that no principle was infringed where a county council promoted a Bill which sought to confer powers on other authorities in the county in any local government matter and that it might well be a matter of general convenience that, where private legislation was needed by several authorities within the county, the county council should seek to obtain it on behalf of the authorities concerned. Standing Orders designed to give effect to the safeguards recommended are being drafted (220 H.L. Deb. 267, December 10, 1959).

Privilege

On December 2, 1959, the Speaker ruled that no prima facie breach of privilege was disclosed by an excerpt from *The Times* newspaper concerning the telephone interception referred to on pp. 76–77, above (614 H.C. Deb. 1185–1194).

Procedure

Private Members' time. On December 16, 1959, the Home Secretary said that in addition to the twenty Fridays already allotted, the Government were prepared to give four other opportunities, on two Mondays and two Wednesdays (615 H.C. Deb. 1458–1459).

Select Committee. On December 16, 1959, the Home Secretary gave a summary of the recommendations of the Report which the Government proposed to invite the House to accept (615 H.C. Deb. 1459–1468; see also [1959] P.L. 322, 410).

Public Accounts Committee (House of Commons)

Reports. The Special Report and First, Second and Third Reports from the Committee (1958–59 session) together with its proceedings, minutes of evidence, appendices and index have been published (H.C. 76–1, 93–1, 201–1, 248–1 of 1958–59).

Speaker

On October 20, 1959, the election of the Speaker was debated and Sir Harry Hylton-Foster was unanimously called to the Chair (612 H.C. Deb. 2–18; see also 19 and 219 H.L. Deb. 7–8, October 21, 1959).

An humble Address was presented to Her Majesty that she might be pleased to confer some signal mark of Her Royal Favour on Mr. Speaker Morrison on his retirement (612 H.C. Deb. 1212, November 5, 1959; see 613 H.C.

Deb. 210, November 10, 1959; 610–620, November 12, 1959; 687–688, November 13, 1959; 1170–1218, November 18, 1959).

Statutes

Royal Assent. The Mental Health Act, 1959 (see above, p. 81), received the Royal Assent on July 29, 1959; the Judicial Pensions Act, 1959 (see above, p. 74), the Atomic Energy Act, 1959 (see above, p. 96), and the Sea Fish Industry Act, 1959 (see below, p. 101), received the Royal Assent on December 17, 1959.

Television

On December 10, 1959, the Prime Minister said that the proposal to televise proceedings in the House of Commons was being examined (615 H.C. Deb. 742–743; 1646–1648, December 17, 1959).

Public Authorities

General

A list has been published of members of public boards of a commercial character as at November 1, 1959, with salaries and allowances, together with a list of those holding more than one appointment (Cmnd. 911).

Agricultural Land Commission

The report for 1958–59 has been published (H.C. 1 of 1959–60).

Board of Control

The reports for 1958–59 have been published (H.C. 256 of 1958–59; Cmnd. 892).

Central Land Board

The report for 1958–59 has been published (Cmnd. 908).

The report completes the series of annual reports published by the Board, which was dissolved on April 1, 1959. The Board's remaining functions in England and Wales were transferred to the Minister of Housing and Local Government, and in Scotland to the Secretary of State. Future accounts of the work will be incorporated in the annual reports of their departments.

The Board was established in 1948 to assess claims for loss of development value made on the sum of £300 million set aside for that purpose under the Town and Country Planning Act, 1947. It was also responsible for collecting development charges. Development charge was abolished in 1953, and a revised system of compensatory payments, based on claims made under the 1947 Act, was introduced in the Town and Country Planning Act, 1954. The Board's main duty was to assess and make such of these payments as fall under Part I of the 1954 Act, and to recover them where appropriate from public authorities.

The report shows that by the end of the year 116,738 applications for payment under Part I had been made to the Board, of which 31,502 were found to be ineffective. Payments totalling £64,015,495, including interest, had been made to 79,190 applicants. "Nil" payments were determined in 5,244 cases, and in 253 cases payments amounting to £118,324 were wholly set off against payments due to the Board. Thus, when the Board was dissolved only 549 Part I applications were outstanding.

In England and Wales twelve appeals against the Board's determinations were made to the Lands Tribunal during the year, bringing the total up to 654 appeals since the 1954 Act began to operate. 557 of these were withdrawn without proceeding to a hearing, and of the remainder eighty-one were dismissed and ten allowed. Six appeals were outstanding at the end of the year.

There were no disputed cases in Scotland during the year. All the fifty-one disputed cases in previous years were settled by negotiation.

In the year 2,069 certificates of the unexpended balance of established development value were issued in England and Wales under section 48 (1) of the 1954 Act, and 749 certificates were issued under section 48 (2) to public authorities acquiring land under compulsory purchase powers. For Scotland the corresponding figures were twenty-one and four.

It was the Board's duty to collect from public authorities, in respect of acquisitions of land before January 1, 1955, certain Part I payments made by the Board to the persons from whom the land was acquired. In 1958–59 £865,112 (including £31,121 in Scotland) was collected under this head. This brings the total amount recovered to £15,213,734.

The work of collecting development charges on development begun before November 18, 1952, continued during the financial year. The amount received in cash was £49,521. From the beginning of operation of the 1947 Act (July 1, 1948) until March 31, 1959, the amount received in cash or set off against claims was £26,146,272.

New Towns

Reports have been published for 1958–59 of the development corporations (H.C. 315 of 1958–59; H.C. 3 of 1959–60).

The names and qualifications have been given of the members of each corporation appointed during the twelve months preceding December 1, 1959 (614 H.C. Deb. *117–119*).

Royal Fine Art Commission

The report for 1958–59 has been published (Cmnd. 909).

Sugar Board

The report and accounts of 1958–59 have been published (H.C. 275 of 1958–59).

Traffic Commissioners

The summary of annual reports for 1958–59 has been published (H.M.S.O. 55–181–0–59).

White Fish Authority

The Sea Fish Industry Act, 1959 (8 Eliz. 2, c. 7) received the Royal Assent on December 17, 1959. Section 1 increases the aggregate amount of white fish and herring subsidies. Section 2 increases the aggregate amount of grants by the White Fish Authority towards new vessels and engines. Section 3 amends section 5 (2) of the White Fish and Herrings Industry Act, 1957. Section 4 provides for the increase of improvement of marine resources. Section 5 makes regulations for nets and other fishing gear. Section 6 provides for limits to the size of fish. Section 7 makes provision for the restriction of fishing for sea-fish. Section 8 provides for the extension of the power to licence fishing boats. Section 9 makes amendments as to certain penalties. Section 10 makes a consequential amendment of section 22 of the Sea Fish Industry Act, 1951. Section 11 provides for the application of certain provisions to the Isle of Man and the Channel Islands. Section 12 makes provision for Orders made under the Act. Section 13 is the interpretation section. Section 14 extends the Act, except section 2, to Northern Ireland.

Remedies

Certiorari

Section 40 (1) of the National Insurance (Industrial Injuries) Act, 1949, which enables a medical board to review the decision of another such board

or of a medical appeal tribunal on being satisfied " by fresh evidence " that the decision was given in consequence of non-disclosure of a material fact, does not apply unless the new evidence could not have been, or could not reasonably be expected to have been, produced at the original hearing.

On appeal against a medical board's assessment of 5 per cent. loss of faculty, a workman produced a statement by a surgeon concerning an examination he made before an operation carried out eleven days before the hearing. The medical appeal tribunal dismissed the appeal. Later the workman produced a further statement giving the result of the operation, which persuaded another medical appeal tribunal to increase the figure over 5 per cent. Another medical appeal tribunal set aside this last decision on the ground that, as the further statement could have been produced to the first appeal tribunal, it was not " fresh evidence " on which the first appeal tribunal's decision could be set aside. *Held*, that the claimant had been unable to produce the evidence before the decision under review was given, within the section, and that the decision of the second appeal tribunal should not be quashed by certiorari: R. *v.* MEDICAL APPEAL TRIBUNAL (NORTH MIDLAND REGION), *ex p.* HUBBLE [1959] 3 W.L.R. 456; [1959] 3 All E.R. 40, C.A.

Habeas Corpus

Per Lord Evershed M.R.: " I am . . . unable to accept the contention that because Northern Rhodesia is a ' protectorate,' therefore, and as a matter of course and of principle, it follows that the Court of Queen's Bench has no power or jurisdiction to make an order of habeas corpus in the case of a British subject in that country who is unlawfully or arbitrarily detained there. . . . I do not intend by any means to assert a contrary general proposition—namely, that the writ of habeas corpus will run in any protectorate—still less that it will run in any foreign country. But . . . if upon a proper investigation of the facts it appears that the internal governance of Northern Rhodesia is in legal effect indistinguishable from that of a British colony or a country acquired by conquest, then in conformity with the nature of the writ . . . I see . . . no reason for denying jurisdiction to the court."

The applicant for a writ of habeas corpus was confined to the Mporokoso District in Northern Rhodesia by restriction orders; the respondents to the application were the Governor of Northern Rhodesia, the District Commissioner and the Secretary of State for the Colonies. The respondents took the preliminary objection that the court had no jurisdiction to issue the writ. *Held*, that jurisdiction ought not to be limited to territories, outside England, which were strictly labelled " colonies or foreign dominions," but would extend to territories which, having regard to the extent of the dominion in fact exercised, could be said to be " under the subjection of the Crown " and in which the issue of a writ would be regarded as " proper and efficient "; accordingly, subject to a decision as to the degree of sovereignty exercised in Northern Rhodesia, the court had jurisdiction to issue the writ: *Ex p.* MWENYA [1959] 3 W.L.R. 767; [1959] 3 All E.R. 525, C.A.

SCOTLAND

See COURTS (above, p. 74), NATIONAL HEALTH SERVICE (above, p. 85), TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS (below, p. 104).

SUBORDINATE LEGISLATION

Parliamentary proceedings

Select Committee on Statutory Instruments (*House of Commons*). The Committee has been appointed for the session 1959–60 (612 H.C. Deb. 527–528, October 29, 1959).

On November 3 and 17, December 1 and 8, the Committee considered 91, 24, 23 and 14 instruments respectively and resolved that it was unnecessary to draw the special attention of the House to them. The Committee asked for memoranda from Government Departments in respect of five instruments.

In their Second Report, the Committee drew the special attention of the House to the Trustee Savings Bank (Increase of Pensions) Order, 1959 (S.I. 1959 No. 1534), on the ground that it purports to have retrospective effect where the parent statute confers no express authority so to provide. In this Second Report also, the Committee drew the special attention of the House to the Draft Trafalgar Square Regulations, 1959, on the ground that their purport calls for elucidation (H.C. 18, 18–II, 18–III, 18–IV).

Special Orders Committee (House of Lords). In the First and Second Reports, the Committee examined seven statutory instruments. The Committee found that one instrument raised important questions of policy and principle, but that all could be passed by the House without special attention and all could be approved without further inquiry (H.L. (3) (25) of 1959–60).

Town and Country Planning

Appeal

On December 1, 1959, the House of Commons debated the permission given by the Minister of Housing and Local Government for a room at Capel Curig to be used as a club (614 H.C. Deb. 1139–50).

Delegation

The Town and Country Planning (Delegation) Regulations, 1959, have been made.

These regulations are made under section 34 of the Town and Country Planning Act, 1947, and revoke the Town and Country Planning (Authorisation of Delegation) Regulations, 1947.

The regulations entitle councils of county districts with a population of sixty thousand or more to claim a wide measure of delegation under Part III of the 1947 Act and also authorise the Minister, if satisfied that there are special circumstances justifying such a course, to require similar delegation to a council of a county district with a population of less than sixty thousand. The regulations set out the procedure to be followed by county district councils wishing to claim delegation under these new powers.

The regulations also repeat those parts of the repealed regulations which related to the delegation of functions to county district councils, without regard to population (S.I. 1959 No. 1915).

The Ministry of Housing and Local Government has issued a circular explaining the arrangements for the delegation to district councils of certain planning functions of county councils.

The principal functions subject to delegation concern applications for planning permission, orders for preserving trees and the control of outdoor advertising. Mineral development is excluded, but county councils have power to delegate the control of this too if they want to.

As far as the other district councils are concerned, the Minister, in the circular, calls on county councils to review their arrangements for planning control. In some counties, he says, it may be generally agreed that the existing arrangements are satisfactory, but in others it may now be right to consider introducing a delegation scheme, or extending existing delegation arrangements.

He believes that "the satisfactory exercise of planning powers in the counties demands a partnership between the county and district councils which can best be achieved by the fullest measure of delegation to the district councils coupled with a willingness on the part of the district councils to maintain close consultation with the county council."

The Minister thinks that " in general, any district council to which adequate technical advice is available should be left free to decide most applications for development which is in accordance with the development plan, though in any case of doubt the district council should consult the county council. He hopes that one result of the review of the existing arrangements will be to ensure the speedy handling of straightforward planning applications, and, where difficulties are foreseen, to make it more frequently possible for a discussion to be arranged with an applicant."

The Minister also suggests that county councils should give district councils which have the necessary staff the fullest opportunity of co-operating in the preparation and review of town maps (Circular No. 58/59).

Industrial development and preservation of the countryside

The House of Commons debated this subject on November 20, 1959 (613 H.C. Deb. 1485–1567).

Piccadilly Circus development

The House of Commons considered the proposal to erect a building on the northern sector of the Circus on November 17, 24, 26 and December 8, 1959 (613 H.C. Deb. 961–964; 614 H.C. Deb. *25*, 727–738; 615 H.C. Deb. *30*). A public inquiry opened on December 16, 1959.

The House of Lords considered the proposal on November 17, December 1, 2 (219 H.L. Deb. 599–602, 1027–1029, 1084–1090).

Tribunals and Judicial Functions of Ministers

General

The Tribunals and Inquiries Act, 1958 (Commencement No. 2) Order, 1959, has been made.

This Order provides that January 1, 1960, is to be the appointed day for the purpose of the Tribunals and Inquiries Act, 1958, s. 7. Section 7 provides that vacancies among the General Commissioners of Income Tax in England and Wales which would before the appointed day have been filled by the Land Tax Commissioners are henceforth to be filled by the Lord Chancellor (S.I. 1959 No. 2044).

Disciplinary bodies

Law Society. Findings and orders of the disciplinary committee set up under the Solicitors Act, 1957, are absolutely privileged.

The plaintiff sued members of the disciplinary committee for libels contained in their findings and orders in a disciplinary matter considered by them which they had published. *Held,* that the publication was absolutely privileged: Addis *v.* Crocker [1959] 3 W.L.R. 527; [1959] 2 All E.R. 773, Gorman J.

Medical practitioners. On December 14, 1959, the Minister of Health rejected the suggestion that the names of doctors fined by the executive councils of the National Health Service for neglect of duty should be published (615 H.C. Deb. 1027–1028).

Lands Tribunal

Procedure. The Attorney-General stated that it was for the Lands Tribunals to decide whether or not to inspect premises in rating cases and was not a matter for which he was answerable (614 H.C. Deb. 978, December 1, 1959).

The Lands Tribunal (Amendment) Rules, 1959, amend the Lands Tribunal Rules, 1956. New Rules, Forms and Fees are added to regulate the issue of

certificates for the registration of notices under the Rights of Light Act, 1959, s. 2. Other amendments include an amendment to Rule 29 which will permit the selection of a test case from two or more appeals involving the same issue of fact, and an amendment to Rule 51 which will allow a limited extension by consent of the parties of the times appointed by the Rules for the submission of certain documents in the nature of pleadings (S.I. 1959 No. 1732).

Mental Health Review Tribunals

The Attorney-General stated that the eligibility of members of these tribunals to consider any particular case or class of case would be subject to Rules about which the Lord Chancellor intended to consult the Council on Tribunals (615 H.C. Deb. *145*, December 15, 1959).

National Insurance Adjudicator

The National Insurance (Non-Participation—Appeal and References) Regulations, 1959, prescribe the procedure for determination by the Adjudicator appointed under Part II of the National Insurance Act, 1959, of any question whether an employment is to be treated as a non-participating employment for the purposes of that Act or as to the persons in relation to whom or the period for which it is to be so treated. (The National Insurance (Non-participation—Certificates) Regulations, 1959, provide for the submission to the Adjudicator of any such question on appeal from a decision of or on reference by the Registrar.) The Regulations include provision for oral hearings and other procedural matters and contain a power for the Adjudicator, or a reference on appeal to him, to review decisions given by himself or the Registrar on questions whether any employment is to be treated as a non-participating employment in relation to any person, or the period for which it is to be so treated (S.I. 1959 No. 2119).

National service

Umpire's decisions. Two selected decisions by the umpire in respect of application for postponement of liability to be called up for service under the National Service Acts, 1948–55 have been published by the Ministry of Labour and National Service (N.S. Code 2, Pamphlet No. 2/59, containing decisions Nos. 97/59, 187/59 N.S.).

Pensions Appeal Tribunals

The Pensions Appeals Tribunals (Scotland) (Amendment) Rules, 1959, amends the Rules governing the procedure of the Pensions Appeal Tribunals by increasing the fees which may be paid to medical specialists and the expenses which may be allowed to appellants in respect of medical witnesses and reports (S.I. 1959 No. 2067).

Planning appeals

Bulletin of selected appeals decisions No. 3 (Scotland) has been published (H.M.S.O. 49–383–3).

Costs. On December 15, 1959, the Minister of Housing and Local Government said that the Lord Chancellor was referring the question of costs to the Council on Tribunals (615 H.C. Deb. *133*).

Inspectorate. On December 15, 1959, the Minister of Housing and Local Government said during the preceding year in Welsh cases he had rejected the recommendations of his inspectors in twelve cases and in six of these he found in favour of the planning authorities (615 H.C. Deb. *136*).

Wales

Council for Wales and Monmouthshire

On November 10, 1959, the Minister of Housing and Local Government published a statement made by the Prime Minister to the Council setting out his intentions. The Council was being re-constituted. The Minister ceased to be chairman or a member of the Council on September 30, 1959 (613 H.C. Deb. 196–197).

The names of the new Council were given on December 16, 1959 (615 H.C. Deb. *197–198*).

See also Tribunals and Judicial Functions of Ministers (above, p. 104).

Wireless and Television

British Broadcasting Corporation

Report and accounts for 1958–59 have been published (Cmnd. 834).

Commercial Sound Broadcasting

On November 26, 1959, the House of Lords debated a motion asking H.M. Government whether they were now prepared to consider the establishment of a commercial sound broadcasting station on similar lines to the Independent Television organisation (219 H.L. Deb. 988–1026).

Independent Television Authority

Account has been published of the sums issued to the Postmaster-General out of the Consolidated Fund and paid into the Exchequer, 1958–59 in respect of advances to the I.T.A.; together with the report of the Comptroller and Auditor General thereon (H.C. 45 of 1959–60).

Report and accounts of the I.T.A. for 1958–59 have been published (H.C. 2 of 1959–60).

See also Parliament (above, p. 98).

COMMONWEALTH AND DEPENDENT TERRITORIES

General

Colonial Development Corporation

The Report of the Committee of Enquiry into the Financial Structure of the Colonial Development Corporation has been published. The Committee recommends that as from January 1, 1959, loans to the Corporation for the purpose of "finance house" business should be covered by the issue of A stock, the capital of which would be repayable to the Government in conformity with the redemption arrangements between the Corporation and its own respective borrowers. All other loans to the Corporation should be covered by the issue of B stock, the capital of which would be repayable out of any surplus income available after other specified charges had been met. Borrowings outstanding on January 1, 1959, and representing the amount of special losses should be replaced by the issue of a C stock. The recommendations are designed to give the Corporation a financial structure more appropriate to its functions, and to ensure that the financial position is more easily deducible from the accounts (Cmnd. 786).

Colonial Reports

The Secretary of State for the Colonies on November 20, 1959, gave lists of annual reports for 1958 not then published in the U.K., of biennial reports

of 1957–58 not then published in the U.K., and of those countries due to produce biennial reports for 1958–59 (613 H.C. Deb. *167*).

Barbados

Colonial Report

The Report for 1956 and 1957 has been published by the Colonial Office (H.M.S.O. 58-1-3-57).

Basutoland

Constitutional arrangements

The Queen in Council has approved instruments by which Basutoland receives a new constitution. This follows discussions with a delegation from Basutoland at the end of 1958.

The constitution gives Basutoland its first legislative council, to be known as the Basutoland National Council, and seventy-six of its eighty members will be African. The eighty members will be divided equally between elected and non-elected members. Forty of them will be elected from among members of the District Councils which will act as electoral colleges for this purpose. The other members will comprise twenty-two principal and ward chiefs *ex officio*, fourteen members nominated by the Paramount Chief, and four senior officials of the Administration.

There will be an Executive Council consisting of four senior officials (including the Resident Commissioner) and four unofficial members of the Basutoland National Council, the Resident Commissioner being chairman and enjoying both a deliberative and a casting vote.

At the express wish of the Basuto representatives, important executive functions will be vested in the Paramount Chief, especially in regard to the land of Basutoland, and the Executive Council will be advisory to both the High Commissioner and the Paramount Chief. But the powers of the High Commissioner and the Paramount Chief in regard to the Council's advice are to be different, the Paramount Chief's powers being limited to those of delay and reference to the Basutoland National Council. Before discharging these functions of delay and reference back, the Paramount Chief will be obliged to consult the Resident Commissioner, the Paramount Chief's nominee on the Executive Council and one other person nominated by the Paramount Chief.

For the elections to the District Councils there will be a single electoral roll, which will comprise both Basuto and non-Basuto British subjects and British Protected Persons. The franchise contains no discrimination on the score of race, colour or creed. All voters must be taxpayers and over twenty-one years of age.

The Basutoland National Council will have power to legislate for all persons in Basutoland in respect of all matters except those reserved for the High Commissioner (for example external affairs, defence and the public service). They will discuss and vote the estimates for all subjects within their legislative field and may discuss, though not vote on, the estimates for the reserved subjects (Cmnd. 897).

Bechuanaland

Constitutional arrangements

In the House of Commons on November 2, 1959, the Minister of State for Commonwealth Relations referred to the fact that the High Commissioner for the High Commission Territories in Southern Africa had that day authorised the issue of a unanimous report from the Constitutional Committee of the Joint Advisory Council of the Bechuanaland Protectorate (612 H.C. Deb. 797–798).

There is at present no Legislative Council in the Protectorate, legislative authority being vested in the High Commissioner. The Joint Advisory Council is drawn from African and European Advisory Councils and meets twice a year under the presidency of the Resident Commissioner. Its Constitutional Committee's report recommends the establishment of a Legislative Council and an Executive Council. It will be considered in due course by the Secretary of State for Commonwealth Relations, together with any recommendations that the High Commissioner may make.

The Report emphasises that the main purpose of a new constitution must be to foster good relations between the different communities in the territory. It makes the following recommendations:

The present Joint Advisory Council should be re-organised as a Legislative Council with powers to legislate for the peace, order and good government of the territory subject to the assent of the High Commissioner, who would also have power to ensure the passing of any law which he considered necessary. Membership of the council should be increased to thirty-five, to allow for twenty-one elected members, four nominated members and ten official members. African and European communities should be represented on the council in equal numbers as at present. One seat should be reserved for the small Asian community. The Resident Commissioner should preside over the Legislative Council. An Executive Council should be created, comprising four leading unofficial members of the Legislative Council—two European and two African—and a majority of official members. The African members of the Legislative Council should be chosen by the existing African Advisory Council—a body consisting of eight chiefs and thirty-one ordinary members representing all the tribes and other African communities. The ordinary members of this body are at present appointed in accordance with tribal procedures, but the report recommends that the tribal councils which are now being established should in future elect the ordinary members. It says that the time is not yet ripe for direct elections by the inhabitants of the territory. The European members of the Legislative Council and the one Asian member should be elected by their respective communities (see also 613 H.C. Deb. 564–565, November 12, 1959).

Colonial Report

The Report for 1958 has been published by the Commonwealth Relations Office (H.M.S.O. 58–1–5–58).

British Guiana

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–7–58).

Brunei

Constitution

On September 29, 1959, the Sultan of Brunei promulgated the first written constitution for his state, under which Executive and Legislative Councils will be set up, replacing the former nominated State Council, and a Mentri Besar (Chief Minister) will be appointed by the Sultan and will be responsible to him for the exercise of executive authority in the state.

At the same time a separation of the Brunei and Sarawak administrations was brought into effect, and the arrangement whereby the Governor of Sarawak has also been High Commissioner for Brunei was ended. A separate post of High Commissioner for Brunei has been created and the former post of British Resident has been abolished.

The High Commissioner will advise the Sultan on such matters as defence, external affairs, internal security, and generally on matters other than those

affecting the Moslem religion and Malay custom. To define the relationship between Brunei and the United Kingdom and the status and authority of the High Commissioner under the new constitutional arrangements, a new agreement, replacing a treaty of 1906, has been signed by the Sultan and by the Commissioner-General for the United Kingdom in South East Asia, Sir Robert Scott, representing the Queen.

The Executive Council will be presided over by the Sultan and will consist of seven *ex officio* members, the High Commissioner, and seven unofficial members. The Legislative Council will be presided over by the Mentri Besar and will have an unofficial majority. It will comprise eight *ex officio* members, six official members appointed by the Sultan, sixteen elected members and three members nominated by the Sultan.

It is the declared intention of the Sultan gradually to introduce elections into the state. Until the election machinery is ready, the unofficial members of the Legislative Council, instead of being elected, will be nominated by the Sultan (Commonwealth Survey, C.O.I., October 13, 1959).

Cameroons

Report

The Report by H.M. Government in the United Kingdom to the General Assembly of the United Nations, 1958, has been published (Colonial No. 341).

Cyprus

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–12–58).

Recent developments

Archbishop Makarios was elected first President of the future Cyprus Republic on December 13, 1959, when he received about 70 per cent. of the poll in a straight contest with Mr. John Clerides, Q.C., the candidate of the Democratic Union. Dr. Fazil Kutchuk was officially declared Vice-President of the Republic on December 3, when his nomination was unopposed. The final voting figures in the presidential election were:

Archbishop Makarios	144,501
Mr. John Clerides	71,753
Total electorate	238,000

Archbishop Makarios contested the election as a national leader with the support of the United Democratic Front for Re-generation (EDMA) which was formed in April by former members of EOKA at the instigation of the Archbishop and General Grivas. The Democratic Union is a new political group formed in November under the joint leadership of Mr. Clerides and Dr. Dervis, the Mayor of Nicosia, and is composed of a number of dissident elements ranging from the extreme right to near Communist but united in their opposition to the London and Zürich agreements and the method of their implementation by Archbishop Makarios during the transitional period. The Communist-controlled Akel Party, which was proscribed during the state of emergency, did not contest the election, but gave its support to Mr. Clerides.

In his first proclamation after being elected President-elect on December 14, Archbishop Makarios appealed for an end to fanaticism and antagonism in Cyprus and for co-operation between Greeks and Turks "in a spirit of sincerity, absolute respect for each other's rights, and real understanding of commercial interests and deserts." He had no political ambitions for himself

and placed himself "in the Cypriot people's service, irrespective of political grouping and social class."

The Governor of Cyprus, Sir Hugh Foot, ended the state of emergency on the island by formal proclamation on December 4. In an earlier statement the Governor said:

"The time has come to end the state of emergency which was declared just over four years ago. With the approval of the Secretary of State for the Colonies, I shall accordingly make the necessary enactments and give the necessary orders this week.

I have already cancelled many of the emergency regulations. The effect of the action which I shall now take will be to cancel those that remain and to dispense with powers to make emergency regulations in future.

At the same time I shall remove all the remaining proscriptions imposed on organisations during the emergency.

While I remain responsible for internal security in the island I must, however, retain certain special powers under the ordinary law to prevent illegal traffic in arms and otherwise to maintain security. In addition, certain other powers, particularly dealing with requisitioned land property, will have to be maintained until the requisitions run out or until they can be otherwise ended.

These residual powers will be covered by a new law to be enacted as part of the action for ending the emergency.

During the nine months since the London Agreement was signed we have worked together to restore normal conditions and to revive confidence and to prepare for the establishment of the new republic. We have made good progress. Now we enter the last lap. Now we can leave the past behind, and concentrate all our effort on the constructive task of establishing the new Republic by February 19 next year."

The state of emergency was declared in Cyprus by the former Governor, Field-Marshal Sir John Harding, on November 26, 1955, and during the four years of the emergency some 642 people were killed, either at the hands of terrorists or by the security forces.

The most important achievement in the constitutional discussions in recent weeks was the conclusion of the agreement on the question of executive authority in the new constitution. This agreement, which set out the executive powers to be exercised by the President, the Vice-President and the Council of Ministers, was negotiated by the representatives of Greece and Turkey and the representatives of the Greek Cypriot and Turkish Cypriot communities in the Joint Constitutional Commission and was accepted and signed by Archbishop Makarios and Dr. Kutchuk on November 10. Under the agreement the President will take "precedence over all persons in the republic." He will be the Head of State and will represent the republic in all its official functions.

The following statement, which was issued by the Joint Constitutional Commission in Nicosia, gives an outline of the constitutional clauses dealing with executive powers.

"The President and Vice-President will ensure the executive power. To do this they shall have a Council of Ministers, consisting of seven Greek and three Turkish ministers appointed by them respectively, to exercise executive power on all matters other than those expressly reserved for the President and Vice-President.

The powers to be exercised by the Council of Ministers include, among others, the general direction and control of the government, direction and general policy of foreign affairs, defence and security, and co-ordination and supervision of all public services, other than those which are within the competence of communal chambers.

Decisions of the Council of Ministers shall be taken by an absolute majority and shall be promulgated by the President and Vice-President, subject to their power to return such decisions to the Council of Ministers for

reconsideration, and of a final veto on decisions relating to foreign affairs, defence and security."

The constitutional talks in Nicosia were suspended by Archbishop Makarios in October after the discovery of ammunition aboard a Turkish motor-vessel off Cyprus. After two meetings with the Archbishop and Dr. Kutchuk, the acting Governor, Mr. George Sinclair, issued an appeal on October 24 to both the Greek and Turkish communities to " hand in all arms and ammunition at present illegally held, whether by individuals or organised groups," by midnight on November 4, after which date " the full rigour of the law would be enforced in cases of illegal possession." The Government would also take all measures in their power to stop illegal importation. Both Archbishop Makarios and Dr. Kutchuk later addressed their communities on the arrangements for handing in arms, and they pledged themselves to assist the Government in seizing any arms illegally held after November 4. The constitutional talks were resumed on November 2, following the return to the island of the Governor, who had been in London for consultations with the Prime Minister and Secretary of State for the Colonies (Commonwealth Survey, C.O.I., December 22, 1959).

East Africa

The East Africa (High Commission) (Amendment) Order in Council has been made.

Under section 3 of the East Africa (High Commission) Order in Council, 1947, as amended, Parts III and IV of the Order, by which the East Africa Central Legislative Assembly is constituted and provision is made for the making of laws by the East Africa High Commission and the Assembly, will cease to have effect on December 31, 1959. This Order provides for the continuance in force of Parts III and IV until December 31, 1962, and makes certain other amendments relating to membership of the Assembly (S.I. 1959 No. 2203).

Gambia

Constitution

A sessional paper issued in the Gambia on September 23, 1959, gave the text of two important dispatches on changes to the constitution of the Gambia.

The first is the Governor's (Sir Edward Windley's) dispatch of June 15, 1959, setting out his recommendations. These arose from proposals put forward by a conference held in March, in which unofficials both from the colony and the protectorate took part, and from discussions held during the visit of the United Kingdom Secretary of State to the Gambia early in June. The second dispatch is the Secretary of State's reply, dated September 8, 1959, in which he endorsed the Governor's proposals and undertook to set in hand the necessary changes in the constitutional instruments of the territory.

The salient features of the proposals are as follows: (*a*) The Legislature would be increased from twenty-one to thirty-four representatives, of whom seven would come from the colony and twenty from the protectorate. Of these twenty, eight would be elected by the chiefs and twelve would be elected on a basis of universal adult suffrage. This means that there would be nineteen directly elected members from single-member constituencies. As at present, there would be seven official and nominated members. (*b*) There would be universal adult suffrage throughout the whole territory, whereas this was previously confined to the colony area. (*c*) The Governor's reserve powers and final responsibility for good government would remain as at present. (*d*) In the Executive Council the number of Ministers would be increased to not more than six, of whom not fewer than three would have portfolios.

The present constitution of the Gambia dates from 1954. It provides for an Executive Council consisting of the Governor, five *ex officio* and official

members, and not fewer than six appointed or unofficial members, not more than three of whom may be charged with ministerial responsibilities. There is also provision for a Legislative Council consisting of the Governor and the Speaker, five *ex officio* and official members, two nominated unofficial members, and fourteen elected members, seven of whom represent the protectorate, which has a population of 250,000, as compared with 25,000 in the colony (Commonwealth Survey, C.O.I., September 29, 1959).

The Gambia (Electoral Provisions) Order in Council, 1959, enables the existing Legislature of the Gambia to make provision for the election of members to the new House of Representatives which it is proposed to establish for the Gambia and enables registration of voters in pursuance of any such provision to take place (S.I. 1959 No. 1771).

Gibraltar

Constitutional advances

Since August 1956, the Legislative Council of Gibraltar has had seven elected members, three *ex officio* members, and two nominated members appointed by the Governor. A Speaker was appointed in 1958. The Executive Council, which advises the Governor, consists of four *ex officio* members and four unofficial members.

Constitutional changes made in August 1959 provided for an increase in the life of the Legislative Council from three to five years, and for an increase in the potential candidature for the council by making eligible for election industrial and non-industrial (of and below the rank of Grade I Clerk) employees of the United Kingdom Government and the Gibraltar City Council.

Arrangements were also approved whereby the Governor would designate one of the unofficial members of the Legislative Council, normally the group leader or other person considered to command the greatest measure of confidence amongst the unofficials of the council, as the chief member, and would submit his name for consideration for appointment as an unofficial member of the Executive Council. The arrangements for associating members of the Legislative Council with departments were formalised and the designation and functions of members for the various departments defined. (The " member " system is an early stage in the evolution of a ministerial system.)

At elections for the Legislative Council, held in September 1959, three members of the Association for the Advancement of Civil Rights, three Independents, and one member of the Transport and General Workers' Union were elected (Commonwealth Survey, C.O.I., November 24, 1959).

Gilbert and Ellice Islands

Colonial Report

The Report for 1956 and 1957 has been published by the Colonial Office (H.M.S.O. 58–1–18–57).

Kenya

Conference

On November 2, 1959, the Secretary of State for the Colonies announced the opening of a constitutional conference in London for January 18, 1960 (612 H.C. Deb. 685).

Debate

On December 1, 1959, the House of Lords debated the situation in Kenya (219 H.L. Deb. 1034–1052, 1056–1078).

Revocation of emergency regulations

Statements made in Parliament and in the Kenya Legislative Council on November 10, 1959, announced the Kenya Government's decision to end the state of emergency, which has been in force in the territory since 1952, and the Governor's intention, by the exercise of his prerogative powers, to release from imprisonment all those who have committed offences connected with the emergency.

The emergency regulations will not be revoked until certain special measures have been passed into law. These are: a Bill to enable the necessary controls to be maintained over the small number of Mau Mau detainees who prove " unreconciled and unacceptable to their own people," and a Bill under which the Governor will be able to retain a stricter control than exists at present in permanent law over public meetings and over the registration of political organisations.

The following is the text of the statement made in the House of Commons by the Secretary of State for the Colonies.

" It is just over seven years since the Governor was compelled to assume emergency powers in Kenya. With the improvement of the situation in recent years, it has been possible to abandon some controls and to apply others less widely. But the major emergency powers have nearly all had to be retained.

The Governor has today announced, with the authority of Her Majesty's Government, that as soon as the necessary Bills can be passed to maintain the few special measures to which I shall refer, and provided that there is no deterioration in the situation, the operation of Part II of the Emergency Powers Orders in Council will be terminated and all the remaining emergency regulations will be revoked.

Of the emergency powers assumed seven years ago, the most stringent is that to detain persons without trial. Those who have studied the report of the Fairn Committee will know the committee felt that the Kenya Government was right in its policy of keeping under control those who are irreconcilably attached to Mau Mau. It follows that a remnant of those at present held will have to be kept in restraint for some time to come. The Kenya Government is, therefore, introducing into the Legislative Council a special Bill which will enable the social and psychological task of reintegrating these men into the community to be pursued, while at the same time maintaining the necessary controls over those who still remain unreconciled and unacceptable to their own people. The Bill will be restricted to persons now under control and to listed fugitives still at large. Otherwise, the Governor will relinquish his present emergency powers of detention and restriction.

Among other powers which will lapse are those to prescribe local publications, to license printing presses, to control Kikuyu movement by passbooks, to impose emergency communal labour, and to require the Kikuyu to live in the villages.

This new policy clearly involves risks against which it is only prudent to insure. The Kenya Government has accordingly published a Bill under which the Governor may, after giving due public notice, take such measures for the preservation of public security as appear to be strictly required by the exigencies of the situation. This Bill seeks to meet the problem . . . of putting reasonable and flexible powers in the hands of a Governor to deal with abnormal conditions threatening security which do not justify the use of the sledge-hammer of the Emergency Powers Order in Council. I am glad that the Governor feels that present circumstances require the use of this new Ordinance to continue only two special security measures when the emergency regulations lapse: to maintain a stricter control than exists in permanent law over public meetings, and over the registration of political associations.

Special security powers may from time to time be unavoidable; but the first defence of any society against threats to good order and government must be adequate provision and resolute enforcement of the ordinary criminal law.

The Governor has today also announced his intention, by the exercise of his prerogative powers, to release from imprisonment during the next six weeks all those, numbering about 2,500 people, who have committed offences connected with the emergency on both sides. About 120 of these are deeply imbued with Mau Mau, including sixteen convicted murderers, and they will be detained but will become eligible for rehabilitation and in due course for release. Six are loyalist Africans or Government servants who have committed serious offences upon Mau Mau sympathisers in detention camps or elsewhere. In addition to this, the Governor expects that, by the end of the year, about 500 of those at present detained or restricted will be released through the reviews recommended by the Fairn Committee.

I understand that the Attorney-General of Kenya has decided, in view of the Governor's action, to institute no further proceedings in respect of offences connected with the emergency committed before today.

The aim of these measures is to bring to a close the unhappy chapter of the past seven years, and to encourage the whole Kenya nation to turn together to the constructive tasks of the future" (613 H.C. Deb. 204–210; 219 H.L. Deb. 480–486).

Nigeria

The Nigeria (Constitution) (Amendment No. 3) Order in Council, 1959, amends the Nigeria (Constitution) Order in Council, 1954, as amended, in order to establish a new Federal Legislative House styled the Senate. It also amends the provisions of that Order relating to the House of Representatives and the Western and Eastern Houses of Assembly, and inserts in that Order provisions with respect to fundamental human rights, appellate jurisdiction, the continental shelf of Nigeria and Provincial Commissioners in the Eastern Region (S.I. 1959 No. 1772).

The Nigeria (Constitution) (Amendment No. 4) Order in Council, 1959, amends the provisions of the Nigeria (Constitution) Order in Council, 1954, as amended, relating to the Southern Cameroons, the qualifications for election to certain Legislative Houses in Nigeria and the operation of certain legislation enacted before the Federation was established (S.I. 1959 No. 1981).

The Nigeria (Offices of Governor-General and Governors) (Amendment No. 3) Order in Council, 1959, amends the provisions of the Nigeria (Offices of Governor-General and Governors) Order in Council, 1954, as amended, relating to the office of Commissioner of the Cameroons, the constitution of offices for the Federation of Nigeria and the Southern Cameroons and the Public Seal of the Southern Cameroons (S.I. 1959 No. 1982).

Pakistan

Local government

The Basic Democracies Order promulgated in Pakistan on October 27 by the President, Mohammad Ayub Khan, provides for the constitution of a five-tier system of local governmental institutions. At the bottom level provision is made for union councils and committees in rural and urban areas respectively and for town communities in the towns. Next there are Thana councils in East Pakistan and Tahsil councils in West Pakistan, followed at the next level by district councils and, above them, divisional councils. The top level will consist of provincial development advisory councils, one for East Pakistan and one for West Pakistan.

Members of union councils and committees and town councils will be partly appointed and partly elected, but appointed members will not number more than one-half of the total number of elected members. Election will be by adult franchise. The councils will elect chairmen from among their members.

The Thana and Tahsil councils will have official, appointed and representative members. The representative members will be the chairmen of the union councils and town committees. The total number of official and appointed members will not be more than that of the representative members. The sub-divisional officer will be chairman.

District councils will have official and appointed members. The official members will include the chairman of Thana and Tahsil councils and at least half of the appointed members (the total number of whom will be not less than that of official members) will be chosen from among the chairmen of the union councils and town and union committees, in the district. The Collector will be chairman.

Divisional councils will also have official and appointed members. Amongst the officials will be the chairmen of district councils. Appointed members will number not less than the official members, and at least half of them will be chosen from amongst chairmen of union councils and town and union committees. The chairman will be the Commissioner.

Appointments to the divisional councils, and to union committees within Karachi, Dacca and Lahore, will be made by the Government after consultation with the Commissioner, and to councils at lower levels by the appropriate senior official. In making appointments "regard shall be had to the ability of persons to render service to the people, and due consideration shall be given to the representation of minorities and women" and of special interests of importance in the local area.

Each of the provincial development advisory councils will consist of official and appointed members. Heads of Government departments in the Province, specified by the Government, will form the official element, and appointed members will be people deemed fit for appointment by the President on the recommendation of the Governor of the Province. At least one-third of the appointed members will be drawn from amongst the chairmen of union councils and town and union committees, and the total of appointed members will not be less than the total number of official members. The Governor of the Province will be chairman.

Union councils will be responsible for agriculture, industrial and community development. They will have a wide range of functions, including promotion and development of the co-operative movement, village industries, forests, livestock and fisheries, the adoption of measures for increased food production, the provision and maintenance of water supplies, and the regulation of sanitation.

The role of Thana and Tahsil councils will be mainly to co-ordinate the work of union councils and town committees. The district councils, in addition to a co-ordinating function, will be responsible for a wide range of services, some compulsory and some optional. Amongst the compulsory functions will be provision and maintenance of primary schools, libraries and reading rooms, hospitals and dispensaries, public roads, culverts and bridges; promotion of sanitation and public health, prevention, regulation and control of infectious diseases, enforcement of vaccination; agricultural, industrial and community development. The optional functions, which may be made compulsory by Government direction, include services in the fields of education, culture, social welfare, economic welfare, public health and public works.

A local council may, in the prescribed manner, and with the previous sanction of the Government, promote, administer, execute and implement schemes for undertaking any commercial or business enterprise.

The functions of the provincial development advisory councils will be to advise the Government on matters pertaining to local bodies in the Province on the co-ordination of the activities of such bodies and on matters pertaining to development, and to formulate development plans for the local bodies; to advise the Government on the establishment and maintenance of institutions for the training of the members and servants of local bodies; to promote

research in local government and allied subjects; and to organise conferences, seminars and refresher courses and to disseminate information regarding the activities of local bodies.

A local fund will be formed for every local council, from the union to the divisional levels. To the credit of the local fund will be placed: (*a*) the balance of such fund as, on the coming into force of the Order, is at the disposal of the local body, if any, of which the local council concerned is the successor; (*b*) the proceeds of all taxes, rates, tolls, fees and other charges levied by the local council under the Order; (*c*) all rents and profits payable or accruing to the local council from the property vested in or managed by the council; (*d*) all sums received by the local council in the performance of its functions under the Order, or under any other law for the time being in force; (*e*) all sums contributed by individuals or institutions or other local councils, or by local bodies or other local authorities; (*f*) all receipts accruing from the trusts placed under the management of the local council; (*g*) all grants made by the Government and other authorities; (*h*) all loans raised, and all profits accruing from investments; and (*i*) such proceeds from such sources of income as the Government may direct to be placed at the disposal of the local council.

Every local council will prepare and sanction its annual budget. An annual statement of account will be prepared for transmission to the controlling authority.

All land in a district assessable to rent in East Pakistan and to land revenue in West Pakistan will be subject to the payment of a rate to be known as local rate. The local rate in each district will bear such proportion to the rent or land revenue in the district as the Government from time to time fix, provided that the local rate shall not exceed 50 per cent. of the rent or land revenue.

The local rate will be collected with the rent or land revenue by the village revenue officials responsible for its collection, and its proceeds will be credited to the local funds of the district council and the union councils in the district in such proportion as may be fixed by the Government from time to time.

A district council, with the previous sanction of the Government, and a union council with the previous sanction of the Commissioner, may levy, in the prescribed manner, all or any of the taxes, rates, cesses and fees specified in the Order.

Divisional, Thana and Tahsil councils will not levy taxes, rates, tolls or fees. They will be financed by the Government (Commonwealth Survey, C.O.I., December 8, 1959).

Rhodesia and Nyasaland

Advisory Commission

On November 24, 1959, the Prime Minister announced the composition of the Commission (chairman: Lord Monckton).

With regard to the association of Parliament with the Advisory Commission, Mr. Macmillan said that he had had a number of discussions with the Leader of the Opposition which were not yet concluded. He very much hoped that Mr. Gaitskell would see his way to nominate three Privy Councillors, and a further statement on the parliamentary membership of the commission would be made as soon as possible.

In commenting on the terms of reference of the commission Mr. Macmillan said that the commission would be free, in practice, to hear all points of view from whatever quarter and on whatever subject. He was sure that it would be possible to arrange for written or oral evidence to be received from persons who might be under detention when the commission was operating.

The terms of reference would permit the commission to consider the whole field of the redistribution of powers in either direction between the Federation

and the territories and to advise on the timing of any programme and the character of any changes in the framework that it might suggest.

The Leader of the Opposition, Mr. Gaitskell, said that the House would naturally wish to study the Prime Minister's statement with care. The Opposition maintained their objections to the form of the Advisory Commission, and they particularly regretted that in a body of twenty-six members only five were Africans. He said that the commission would be far more likely to win the support of the African people if it could be made plain beyond any doubt in the terms of reference that it was free to consider, not only federation, but other forms of association as well (614 H.C. Deb. 207–218; 219 H.L. Deb. 890–901).

On December 8, 1959, the Prime Minister announced the names of three Privy Councillors to join the Commission. The Opposition declined to nominate members (615 H.C. Deb. 225–228; see also 220 H.L. Deb. 106; 615 H.C. Deb. 1648–1650; 220 H.L. Deb. 526–529, December 17, 1959).

Colonial Report

The Report on Northern Rhodesia for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–31–58).

See also REMEDIES (above, p. 101).

SIERRA LEONE

The Sierra Leone and the Gambia Court of Appeal Order in Council, 1959, has been made.

The purpose of this Order is to constitute a Court of Appeal for Sierra Leone and the Gambia to exercise the powers of an appellate court in relation to those territories which formerly were exercised by the West African Court of Appeal (S.I. 1959 No. 1977).

The Sierra Leone and the Gambia (Appeals to Privy Council) Order in Council, 1959, makes provision for appeals from the Sierra Leone and the Gambia Court of Appeal to the Judicial Committee of the Privy Council (S.I. 1959 No. 1978).

SOMALILAND

The Somaliland (Constitution) (No. 2) Order in Council, 1959, amends the provisions of the Somaliland (Constitution) Order in Council, 1955, as amended, relating to the Legislative Council of the Somaliland Protectorate (S.I. 1959 No. 1983).

TANGANYIKA

Constitutional advance

The Governor of Tanganyika, Sir Richard Turnbull, made a statement to the Legislative Council on December 15, 1959, in which he announced important constitutional changes for the territory. The major points in his address were: (*a*) reconstitution of the Council of Ministers after the September 1960 elections, with an unofficial majority; (*b*) the Legislative Council to have a majority of elected members; (*c*) a widening of the franchise for the 1960 elections.

In an address to the Legislative Council last March, the Governor announced the setting up of a committee (the Ramage Committee) to conduct inquiries into the composition of the representative side of the council and possible changes in voters' and candidates' qualifications. At the same time he stated that, while this committee was carrying out its work, he would, in consultation with his advisers and the Secretary of State for the Colonies, be considering the question of further constitutional advances; and he expressed

the hope that, when final decisions on the Ramage Committee's recommendations were made public, he would be able to make an announcement on the next moves forward. The present announcement, which coincides with the publication of the Ramage Report and decisions on its recommendations, is made in fulfilment of that undertaking.

Tanganyika's present Council of Ministers was set up on July 1, 1959, and comprises twelve ministers (seven officials and five elected members of the Legislative Council). Of the elected ministers, three are Africans, one Asian and one European. Under the present constitutional arrangements provision is made for a Government majority in the legislature (thirty-four members on the Government side; thirty-three members, of whom thirty are elected, on the representative side), but the Governor has deliberately left a number of nominated seats unfilled so that, in fact, elected members are in a majority.

On the reconstitution of the Council of Ministers, the Governor stated that he had been authorised by the Secretary of State for the Colonies to say that the Government had agreed to the introduction of an unofficial majority in the council following the 1960 elections. The precise details of this would be worked out in discussions in London in the spring of 1960. Representative unofficials would be invited to take part in these discussions.

On the composition of the Legislative Council, the Governor stated that it had been decided that arrangements for the 1960 elections should be made to provide a majority of elected members in the new council. Having regard to the recommendations of the Ramage Report, the elected side of the new council will comprise seventy-one members, fifty of whom will represent open seats, with eleven seats reserved for Asians and ten for Europeans. The new council will also include a small number of nominated members.

On the franchise, the Governor said that the Secretary of State for the Colonies, although sharing the desire of the Ramage Committee that there should be a substantial widening of the present qualifications, considered this could more appropriately be brought about by methods other than those suggested by the Ramage Committee or the Tanganyika Government. In addition, therefore, to qualifications in respect of age and residence in the territory, voters for the 1960 elections will be required either: (*a*) to be able to read or write English or Swahili; or (*b*) to have an annual income of £75 or more; or (*c*) to hold or have held a prescribed office (Commonwealth Survey, C.O.I., December 22, 1959).

Report

The Report by H.M. Government in the United Kingdom to the General Assembly of the United Nations for 1958 has been published (Colonial No. 342).

Trinidad and Tobago

Colonial Report

The Report for 1956 has been published by the Colonial Office (H.M.S.O. 58-1-45-56).

Uganda

Debate

On December 9, 1959, the House of Commons debated the situation in Uganda (615 H.C. Deb. 701–712).

West Indies

Conference

The federal constitution of The West Indies, which came into effect on January 3, 1958, provides that, within five years of that date, a conference of

federal, territorial and United Kingdom governmental representatives shall be called to review the constitution. In June, 1958, the federal House of Representatives resolved that this conference should be convened not later than June 1959 in order to "achieve the goal of self-government and dominion status within the Commonwealth at the earliest possible moment." It was not found practicable to adhere to this time-table, but a preliminary intergovernmental conference was held in Trinidad from September 28 to November 8, 1959.

The preliminary conference was attended by representatives from the Governments of The West Indies and of its constituent territories and by two official observers from the United Kingdom Colonial Office. The conference agreed that the next stage of constitutional advance should provide for dominion status and, in principle, that representation in the federal legislature should be on a basis of population without diminution in the number of seats currently held by each territory. Delegates failed to agree, however, on a formula for the redistribution of seats or on the revision of the scope of the powers of the federal Government. Other matters on the agenda were not reached.

The conference agreed to set up two intergovernmental committees to examine the implications of dominion status. The committees, which will consist of federal and territorial Government representatives under the chairmanship of federal ministers, are to report back, not later than March 31, 1960, to the conference, which will be reconvened at the earliest practicable time to consider the committee reports and to discuss proposals to be put to the United Kingdom Government, including the setting of a date for dominion status.

One of the committees will deal with constitutional and political issues. The other will consider and advise on the most effective means of achieving, as far and as quickly as practicable, a customs union, and will also deal with federal taxation policy, including income tax and excise; federal financial policy, including the allocation of United Kingdom Colonial Development and Welfare assistance for federal and territorial purposes; and concessions and incentives to industry.

The Leeward and Windward Islands Constitutional Conference held in London in June, 1959, agreed in principle that the posts of Governors of the Leeward and Windward Islands should be abolished. The United Kingdom agreement was subject to the reservation that no final decision on the abolition of these posts could be taken until after the review of the federal constitution in the autumn of 1959. The constitutional conference held in Trinidad at the end of September recommended no changes in the powers and responsibilities of the federal Government and it has therefore been decided to confirm the decision of the June conference to abolish the two posts of Governor in the Leeward and Windward Islands. The other constitutional changes, on which agreement was reached in June in London, will also be carried out as arranged.

In the Cayman Islands and the Turks and Caicos Islands, which, until July 4, were administered as dependencies of Jamaica, general elections under universal adult suffrage have been held and a Legislative Assembly and Executive Council set up for each group of islands under the new constitutions provided for by a United Kingdom Order in Council of May 13.

The elections in the Cayman Islands were held on September 23, and were the first to be held under universal adult suffrage, the franchise in the past having in practice been limited to men. On October 2, the Legislative Assembly, consisting of the Administrator, three official members, three nominated unofficial members and twelve elected members, was formally opened by the Governor (the Governor of Jamaica is also, separately from his governorship of Jamaica, Governor of the Cayman Islands and Governor of the Turks and Caicos Islands).

The elections in the Turks and Caicos Islands were held on September 21, and the Legislative Assembly, consisting of the Administrator, three official

members, three nominated unofficial members and nine elected members, was opened by the Governor on October 9.

The Executive Council of each group of islands consists of the Governor (who presides, when present), the Administrator, two official members, one nominated member and two members elected from among the elected members of the Legislative Assembly by the nominated and elected members of that Assembly (Commonwealth Survey, C.O.I., November 10, 1959).

Zanzibar

Colonial Report

The Report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58-1-48-58).

BOOK REVIEWS

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION. By S. A. DE SMITH. [Stevens & Sons, Ltd. 1959. 486 pp. £3 10s.]

PROFESSOR DE SMITH has given us an important, competent and comprehensive book on judicial review, a subject on which (as readers of *Public Law* are well aware) he writes with recognised authority. Very little has escaped him. He has kept abreast of all the latest developments, the Franks inquiry, the disputes over Crown privilege, recent Town and Country Planning legislation and all the rest. So complete are the twelve chapters of his survey that one may be excused from attempting here to enumerate their contents. There is much to stimulate thought. The author's hopes for the future of actions for a declaration, for example, are interesting. He sees in these actions a means by which public authorities can make sure of the scope of their powers without coming to grief and by which the citizen can ascertain his rights if seemingly threatened by administrative bodies. In this aspect of "law without force" he detects the possible emergence of "a typical instrument of social control."

To be more general, if one might over-simplify without unfairness to so fair-minded an author, he would like to increase the judicialisation of Whitehall and to lessen the timidity of the judges. When he refers to "a vast area of legislative and executive discretion effectively shielded from judicial scrutiny" (p. 248), he plainly feels that the area should be smaller. Thus he would like the maxim *audi alteram partem* to be more widely obeyed and not restricted by distinctions between judicial and administrative functions. His views, so persuasively put forward in his lucid pages, may not, of course, commend themselves to everybody. Some old-fashioned obstructionists may be heard to mutter that we have gone quite far enough in judicialising the administrative process and that administrative discretion is not really susceptible to judicial review. Where, they may argue, Parliament grants a power of decision to a Minister and does not prescribe any such judicial procedure as, for instance, a public hearing, why should the rule of *audi alteram partem* apply? The rule has been enlarged so as to require that the applicant shall "know the case he has to meet," and this is supposed to mean, in the case of a departmental decision, disclosure of all the considerations relevant to the process of deciding. But departmental powers are not all alike. There are some of vital economic importance—for regulating imports and exports, for exchange control, for controlling credit and so on. Certainly the department must act bona fide and fairly, but, if anything like a judicial procedure were adopted in these contexts, promptitude and efficiency will suffer. Judicial and administrative techniques are vastly different; each is apt for its own purposes. The views of Lord Thankerton and Lord Greene are on record; they seem to stand in our author's way. Why should we limit a department to the information obtained at the inquiry, as a judge would limit himself? Does not the administrative technique require the department to use its collective knowledge and expertise to the full? It would be a pity if we got the worst of both worlds. Dr. de Smith accepts as "a well-known fact" (p. 44, n. 86) that administrative bodies can apply fixed standards and can thus be the more readily subjected to judicial review. On the other hand, a witness from the vicinity of Whitehall contended before the Franks Committee that, even in the sphere of slum clearance, there ought not to be fixed standards of unfitness for human habitation, because the scale of slum clearance at a given time must depend upon considerations of policy. Can

one adopt the judicial approach to the field of planning when the settled principles would have to be applied to different factual situations? Dr. de Smith can rely on licensing cases, but there the justices are the administering authority and the proceedings are conducted in open court, so that judicial supervision is appropriate. The Franks Report rejected the idea of a recourse to the courts against the decision of a Minister on grounds of fact or merits or reasonableness, and recommended that intervention should be restricted to cases of *ultra vires* or procedural defects.

Admittedly it is difficult, when decisions are taken on the wrong grounds or on inadequate knowledge of the facts, to challenge them effectively in the courts. It is difficult to prove an abuse of power in the absence of full discovery. Must it inevitably follow that the position be reversed? It looks as though Professor de Smith would agree (p. 199) that it would be wrong to inquire into the internal processes leading to a decision by a licensing authority or by an administrative tribunal (just as it would be wrong to inquire what the members of the Court of Appeal say to one another). Is this reticence not appropriate also to internal departmental processes? Ministers must now give reasoned decisions where a statutory inquiry procedure applies (Tribunals and Inquiries Act, 1958, s. 12), and, if challenged, they have to defend their decisions in Parliament. Are we to bring up against them the advice tendered by their officials?

These are old controversies, bedevilled perhaps by awkwardnesses of terminology in part inherited from the Donoughmore-Scott Committee's report. Readers of Professor de Smith's book will have all the material for making up their minds. To descend to minor matters, one or two of his asides may invite comment. Dealing with the failure to lay statutory instruments before Parliament, for instance, he remarks (p. 98, n. 27) that the Indemnity Acts of 1944 and 1951 were "passed merely to allay doubts as to the validity of the instruments in question." Surely that sentence needs revision. They were passed to protect the Minister whose officers had failed him, and they were carefully framed so as to cast no doubt on validity; according to the official view the obligation to lay was merely directory. Earlier (p. 25) he has praised the judges for their self-control and their reluctance to interfere with policy. So far we all respectfully agree; indeed some of us would allow every judge one bite, though drawing the line at *The New Despotism*. Equally he praises the self-restraint of administrators and their high degree of integrity and responsibility. Again we all concur. But when he adds that the administrators' standard of conduct has undoubtedly been influenced by the example set by the judges, it is hard not to beg for some recognition of the initiative of those who have moulded our public service and its traditions. If, however, there is nothing worse than these minutiae to criticise in Professor de Smith's substantial treatise, they are no great matter. He has earned our gratitude by bringing together some 1,800 decisions in a branch of law which defies most of us when we try to break down judicial dicta into neat statements of principle. He has justified the claim, made in his Preface, that this is the first book of its kind to be written by an English author. It is not a book to be read at a sitting, or even at a week-end; but it is one which must find a place in every law library.

CECIL CARR.

LAW AND OPINION IN ENGLAND IN THE 20TH CENTURY. By MORRIS GINSBERG (Ed.). [Stevens & Sons, Ltd. viii and 407 pp. 42s.]

WHEN, in 1898, Dicey accepted an invitation to lecture to the Harvard Law School on the history of English law after 1800, the outcome was a book only slightly less famous than his classic work on the law of the constitution. His *Lectures On the Relation Between Law and Public Opinion in England During the 19th Century* is in many ways a greater achievement than the

work on which his claim to fame chiefly rests. It would take a very powerful and original mind to produce a book that "would do for our present age what Dicey did for the 19th century," yet that is what the publishers claim—and what the editor by implication claims—for this book. But one would hardly expect a sequel to Dicey to be written by a committee, let alone by a mixed bag of scholars and practising lawyers working independently—people as different in their training and outlook as the Master of Pembroke and the late Professor G. D. H. Cole, Professor Richard Titmuss and the Recorder of Sunderland. Nevertheless, it was a splendid idea to prepare a series of lectures commemorating Dicey's work; these were given at the London School of Economics in the session 1957–58, and they are now published at a very reasonable price, under the general editorship of Professor Morris Ginsberg. In so far as the lectures individually treat of the development of the various branches of law since Dicey's day, and in so far as, collectively, they may be said to "survey the law of England as a whole without any attempt to go through the whole of the law"[1] (and their great merit for the student is that they accomplish this rather well), the book may rightly be described as "a continuation of the work of Dicey." But there the comparison ends: for what made Dicey's book great was not simply that it was a competent survey of a hundred years of law-making. It had a unity of purpose and of theme, and a shape, which are altogether lacking in the present volume; and it was informed throughout by Dicey's highly individual style and approach, an approach at once strongly anti-collectivist yet essentially fair-minded and humane. Thus, although, in a characteristic passage, he "perceived that the combination of socialistic and democratic legislation (threatened) the gravest danger to the country," he did not lack sympathy for what that legislation sought to achieve. Indeed, he hoped that "the definite reforms of law or custom, and still more of feeling, which are now advocated on more or less socialistic (*i.e.*, collectivist) grounds may be adopted with success by Englishmen."

It would be better, then, to abandon this rather specious comparison and to treat the book—the symposium rather—on its own merits. There are many good things here; enough to make a very valuable, and indeed enjoyable, book, although the quality of the contributions is a little uneven, and the mixture is in some ways curious. The book opens with an analysis by Professor Ginsberg, at once thorough, elegant and penetrating, of the unsatisfactory Diceian antithesis between individualism and collectivism, and a discussion of what (philosophically) has become of individualism since Dicey wrote. There follows a paper by Mr. John Plamenatz discussing the intellectual legacy of philosophical radicalism. This, though naturally of the greatest interest and importance, somehow contrives to look entirely out of place in this book. It is not so much concerned with what is our actual debt to the philosophical radicals as about what Mr. Plamenatz thinks our debt to them ought to be ("it—*i.e.*, the philosophy of the school—has, as a practical philosophy, much to be said for it, even today; it is still alive, still relevant"). There are then three contributions, one on the Conservative "tradition," one on the Liberal "outlook," and one on the "growth" of Socialism, by Professor Burn, Mr. R. B. McCallum, and Professor Cole. In his amusing and stimulating paper Professor Burn almost falls over backwards in his efforts to be tough-minded about the ridiculous charge that the Conservative Party has any principles, but I think he underrates the extent to which the Party has undergone change since 1945. And, in any case, is it really true that the Conservative tradition in the last half-century has been *nothing* more than "acquiescence" tempered by "elements which allow of an occasional check to that process"? This is plausible without being wholly convincing. Professor Cole's almost valedictory address should be pondered by all socialist

[1] Dicey, Preface to the First Edition.

re-thinkers; it is itself quietly thoughtful in Professor Cole's best manner; one wonders what Dicey would have made of it.

These contributions occupy the first 100 pages of the book; the next 200 pages get down to the bread-and-butter business of surveying "Legal Developments." Professor Lloyd makes a somewhat repetitive though persuasive plea for a law of associations *sui generis*; there is a long and amusing contribution by Professor Griffith, full of the sardonic humour and relentless common sense one always associates with his work, this time devoted to the law of property (land), "vaguely associated in the minds of those who are not lawyers (*e.g.*, the present reviewer) with fee simples being complicated . . . the Forsyte Saga . . . and how difficult it is to perform a straightforward and natural operation like buying or building a house"; Professor Robson makes the familiar attack on Dicey and Diceians and administrative law (I suppose he could scarcely do otherwise since he was asked to talk about it); and there are what seem to the non-lawyer to be extremely valuable and distinguished discussions of labour law and criminal law by, respectively, Professors Kahn-Freund and Mannheim. The section is completed by straightforward descriptive, but extremely useful, pieces on "business" (Professor Gower), monopolies and restrictive practices (Sir David Cairns), and—more hurried and sketchy—family law (Mr. Justice Karminski).

The final section of the book, about ninety pages, is devoted to "trends of social policy." Professor Titmuss explores the health service, with particular reference to the two historical periods in which "a Welshman galvanised B.M.A. House into action," with the acuteness which informs everything that this remarkable man does. Professor Glass writes a scholarly paper (with immense footnotes) on education (he reminds us of Wells's reference to the 1870 Act as "an Act to educate the lower classes for employment on lower class lines, and with specially trained, inferior teachers," a reference which prompts some uncomfortable reflections in the mind of at least one reader as he surveys the contemporary educational scene from the middle of one of the larger industrial conurbations). Finally, Mr. Abel-Smith and Mr. Roberts briefly discuss Social Security and Industrial Relations. The index is good, and it is amusing to see listed the various strictures on Dicey which pervade the lectures: "administrative law, hostility to; criminal law, neglected by; educational policy, given little attention by; monopolies, barely mentioned by; trade unions, failure to understand; notable omissions by" and—what I suppose the radio script-writers would call the "pay-off" line—"war, given little attention by."

J. W. Grove.

Some Problems of the Constitution. By Geoffrey Marshall and Graeme C. Moodie. [Hutchinson & Co. 1959. 21s.]

The problems include conventions, ministerial responsibility and Parliament, ministerial responsibility and the courts, Ministers' powers since Dicey, and a number of minor matters.

Instead of beginning with a general thanksgiving and commendation and proceeding to criticism, the first comment is by way of general confession and statement of prejudice: I do not like collections of this kind which can never be a substitute for a book. And we do need the book which is about the constitution of today. And these two authors, both from past evidence and that of this collection, could have written it.

Now to the commendation. This collection has all sorts of excellent things in it. It gathers together a large number of contemporary problems and deals with them always intelligently and often wisely. Nowadays we seem sometimes to have two constitutions: a theoretical and a practical. One which is written about and one which happens. This is great nonsense, and these essays are continually, expressly and by implication, saying so. The

constitution is changed by happenings and the way they are dealt with. The Franks Report with its statutory and other consequences, Commander Crabb, Crichel Down, Parliament's attitude to its privileges, the changing institution of the Monarchy, Nigel Nicolson's dispute with his constituency party, Overlordery, all these and more are considered in these pages in the context of the constitution. Without any doubt, it is a most valuable anthology. As it should, this collection of opinions causes the reader to pause and question both his own assumptions and those of the authors. Here are some of my pauses.

First, the statement (p. 28) that the King had the *legal* right to refuse his assent to the Irish Home Rule Bill in 1913 but not, perhaps, the *constitutional* right; that is, what powers were "permitted to the King by the non-legal rules of the Constitution" otherwise called "conventions." The authors go on to define conventions as "certain rules of constitutional behaviour which are considered to be binding by and upon those who operate the Constitution, but which are not enforced by the law courts . . . nor by the presiding officers in the Houses of Parliament" (p. 29). Is it suggested that the courts could have enforced the *legal* right of the King to refuse his assent? If not, then what does it mean to say that this is a legal right? My own feeling is that it means nothing. If the King had no constitutional right in this matter, he had no right at all. The Constitution says that the King must accept the advice of his Ministers when a Bill is put before him for his assent. Physically, he could say no or, technically, that he would think about it. Ultimately, one of two things would then happen: either he would be forced to withdraw or the Ministers would accept his refusal. If the first, then the existing constitutional position would stand. If the second, then the Constitution would have changed. But his physical ability to utter the words "le roi s'avisera" is not a legal-contrast-constitutional right.

Secondly, after discussion of the Monarch's position in a modern democracy, the authors say (p. 48): "The Monarchy had no real option, therefore, but progressively to relinquish its governmental powers." There follow these words: "(These comments, it should be added, are intended to be analytical rather than historical in character, and to indicate logical rather than historic connections. The actual development of the modern doctrine of ministerial responsibility was much more involved and much less purposive than these comments would suggest)." It would be interesting to know at what stage of writing that bracket was inserted. It reads as though some friend looking at the proofs had objected to the somewhat formal nature of the preceding discussion. But I wonder if logical connections which are not also historical are useful in considering the present nature of the doctrine of ministerial responsibility or of any other part of the Constitution. The Constitution is what it is today because of what it was yesterday. It is essentially historical in development and logical similarities are, so to speak, coincidental. This same attitude is evidenced by a statement on p. 94: "The conclusion that delegated legislative powers exercised by Ministers cannot be attacked in the courts on the ground of their unreasonableness, whilst by-laws made by local authorities can be so attacked, appears to be based (perhaps unreasonably) upon the appearance of ministerial rules on the table of the House." The authors are here speaking of "judicial reasoning" and I am not sure what "unreasonably" means. Does it mean the distinction is not valid, or is contrary to reason? The real "reason" is surely historical, not analytical. Charters for centuries gave by-law-making powers to boroughs and the courts considered it their ancient duty to intervene between an oppressive borough authority and its ratepayers. But in the nineteenth century they did not feel they could intervene when departmental regulations, made under far more limited and specific powers than the "good rule and government" phrase in charters, were issued.

These comments show the sort of question which these essays raise. But I have not done justice to the great variety of problems dealt with. I hope I

have said enough to show the value of the discussion to all students of political science and constitutional law.

One personal correction: I am quoted (p. 133) as having referred before the Franks Committee to the "magic spell of policy" which could function as "an umbrella term for value judgments and technical criteria" and as "a pretext for a failure to define either," and as having stated certain other views. These excerpts were taken from a memorandum jointly submitted by Mrs. Ruth Glass and myself and the passages quoted (which I fully accept) were written, as was the whole of Part C of that memorandum, by Mrs. Glass and not by me. I should have thought (though this is not meant as a criticism of the authors) that anyone reading the oral evidence would have concluded (and rightly) that the valuable part of our evidence was that contributed by Mrs. Glass.

J. A. G. Griffith.

Parliamentary Sovereignty and the Commonwealth. By Geoffrey Marshall. [Clarendon Press: Oxford University Press. 1957. xi and 277 pp. 35s.]

In his Preface, Dr. Marshall attributes the origin of his long-standing interest in the idea of sovereignty to a well-known passage of Sir Ivor Jennings in *The Law and the Constitution*. Jennings quotes De Lolme's remark that Parliament can do anything except make a man into a woman, and then explains why De Lolme was wrong. Since then Dr. Marshall has thought deeply and often of sovereignty, and what has intrigued him more than statutory sexual metamorphosis has been the paradox that, since there is no legal limit to the power of Parliament, therefore Parliament cannot bind its successors.

Two problems in particular follow from this paradox. Can Parliament divest itself of the power to legislate on certain topics or for certain territories? How far can Parliament limit amendment or repeal by enacting rules governing the manner and form of future legislation? In discussing these problems Dr. Marshall ranges widely over many sources, both legal and political, although his study is primarily a legal one. He cites, and rejects, a lawyer's contention that the sovereignty of Parliament rests on "a political fact for which no purely legal explanation can be given" (H. W. R. Wade, "The Basis of Legal Sovereignty" [1955] C.L.J. 172 at p. 189). Dr. Marshall, who teaches Politics at Queen's College, Oxford, concentrates so much on the legal aspects of the question that the reviewer (another lawyer) is almost ready to charge him with being excessively legalistic.

The two problems of sovereignty should perhaps be treated separately. Whether the Parliament of the United Kingdom can divest itself of power to legislate for a colony on granting independence—whether, for example, in Lord Sankey's famous words, "the Imperial Parliament could, as a matter of abstract law, repeal or disregard section 4 of the Statute [of Westminster]"—must be looked at from two angles. The courts of the newly independent country, applying their own system of law, would no doubt disregard a later Imperial statute, as Dr. Marshall shows in his reference to the South African cases. But it is inconceivable that an English court would ignore the later statute if any question as to the law of that country came before them. The territorial limits of the sovereignty of the United Kingdom Parliament are surely a political matter rather than a legal one: should Parliament deliberately take the step of legislating for a self-governing state the English courts would apply the Act in the same way that they will unhesitatingly accept the directions of the executive on such matters as the recognition and status of foreign states or governments and the extent of British territory. The reason why this "is theory and has no relation to realities" is not, of course, because of the terms of the Statute of Westminster or even of its Preamble,

but simply because no such legislation is likely to be passed: political considerations, including the effect on relations with the state concerned and the problem of enforcing the Act in that state, would inhibit the members of the legislature, and the Government which has, in fact, control over legislation.

There is no such clear analogy to assist in predicting the attitude of English judges to the other problem—whether Parliament can create "entrenched" provisions in English law by providing for the "manner and form" of future legislation. Different South African judges have expressed different views as to South African law. So, too, different English judges may differ. As Mr. Wade said of the South African case, *Harris* v. *Dönges* (1952): "The whole case was argued as if there was a right or wrong legal answer. In fact . . . there was no such necessary legal answer: the court . . . had in substance to make a political decision." Dr. Marshall's reply to this is reminiscent of Geldart's argument that judges do not make law. With the substitution perhaps of "social" for "political," Wade's comment is applicable to many decisions in many branches of law; though some lawyers, who would reject it when applied, say, to the facts of *Lister* v. *Romford Ice and Cold Storage Co., Ltd.* (1957), might be prepared to accept it on an issue of constitutional law.

Dr. Marshall does not confine his discussion to the United Kingdom Parliament, but considers the problems, chapter by chapter, in relation to the legislatures of the other independent states in the Commonwealth. His style is pleasant and eminently readable. His habit of quoting at length from parliamentary debates often enlivens a serious topic (see, for example, the cross-talk from Capetown at p. 197). It must reluctantly be confessed, however, that these quotations add little to the intrinsic value of the study. Thus in his chapter on the Statute of Westminster, the author argues that, as an aid to its construction, recourse to the legislative history of the Bill and the Reports which preceded it is justified by the special circumstances of its enactment. He cites various views from these sources, but is forced to the conclusion that either of two fundamentally opposing views can be backed by the evidence adduced, unwillingly justifying the criticised legal rule of admissibility.

All of this book is interesting. Most of it is valuable. But particularly interesting and valuable is his long chapter on South Africa under the heading "A Case Study in Parliamentary Sovereignty." Taken together with Appendices giving a chronology, and Professor E. C. S. Wade's Opinion written for the South African Government, this gives an outstandingly clear account of the constitutional crisis.

Dr. Marshall describes his book as "an attempt to look at some of the traditional implications of the sovereignty doctrine in the light of certain ideas about the function and description of legal rules in theoretical writing about law, and also of recent constitutional developments outside the United Kingdom." It is clear that, at least until the appearance of the full-length study of principle hoped for in the Preface, the present stimulating book will long be regarded as an important contribution to the theory of sovereignty.

AUBREY L. DIAMOND.

PRINCIPLES OF LOCAL GOVERNMENT LAW. By C. A. CROSS. [Stevens & Sons, Ltd. 1959. x and 482 pp. 35s.]

FOR many years the admirable Hart has dominated the field of students' textbooks on English local government law. The appearance of a challenger is to be welcomed, and it may well be that a number of students will find their needs adequately met by Mr. Cross's book. It is lucidly and concisely written. The synopses of particular local government services are very sound. In the chapter on central government control, where the author draws upon his

experience as a town clerk, and in the appendices (which list, *inter alia*, the distribution of functions between authorities of different classes, the more important statutes giving powers of compulsory acquisition, the principal by-law-making powers, specific central government grants, and local licensing and registration functions outside London), not only the potential examinee will find a good deal of useful information. The provisions of the Local Government Act, 1958, are clearly expounded; it is unfortunate that the Local Government Commission Regulations, 1958, were issued shortly after the book went to press. It is also unfortunate that 1959 has been exceptionally fruitful in important legislation affecting local government authorities; the enactment of the Highways, House Purchase and Housing, Fire Services, Town and Country Planning, Mental Health and New Towns Acts means that the text already needs substantial supplementation and amendment.

The author writes that he has tried to state the underlying principles of local government law, with the particular object of assisting examinees to reason out their answers. It would not be advisable, however, to recommend the book without reserve to a law student who hoped to achieve real distinction; one feels, indeed, that this is pre-eminently a book for the student who is not a legal specialist. Too many of the more difficult problems are glossed over or touched on too lightly. The chapter on judicial remedies is slight, and no serious attempt is made to explore the difficulties inherent in the judicial-administrative dichotomy in the classification of functions. The legal status and liability of police officers are discussed without any reference to section 2 (6) of the Crown Proceedings Act. The concept of delegation in local government law calls for a fuller analysis than it receives. *Smith* v. *East Elloe R. D. C.*, *Prescott* v. *Birmingham Corporation* and *Bishop* v. *Deakin* are referred to, but without critical comment or speculation about their implications; the *Wednesbury Corporation* case and *Watt* v. *Kesteven C. C.* are not cited at all. The references to section 11 of the Tribunals and Inquiries Act, 1958, are misleading because they fail to explain that the section has no application to the special statutory procedure for challenging most classes of orders affecting private rights in land. On the other hand, the difficult problem of the relevance of the *ultra vires* doctrine to chartered corporations is skilfully expounded; though it is odd to find cases on chartered corporations cited as authorities on the application of the doctrine to statutory corporations.

The book is well arranged and well produced, and it is published at a modest price. It will surely go into further editions, and if its price rises with an expansion of the earlier chapters dealing with general principles its readers will have no cause to regret their additional outlay.

S. A. DE SMITH.

ANNUAL SURVEY OF SOUTH AFRICAN LAW 1958. THE FACULTY OF LAW, UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG. [Juta & Co.; Distributors in Europe and the U.K., Sweet & Maxwell, Ltd. 1959. xxx and 294 pp. 48s.]

THIS *Survey* maintains its usual high standard and affords an invaluable service in enabling lawyers in the English-speaking world to keep in touch with legal developments in a jurisdiction which otherwise would become increasingly inaccessible with the growing habit of delivering judgments in Afrikaans. The Editorial Board has carried out a rearrangement of the material which has eliminated duplication and enabled the size of the present volume to be reduced by some 110 pages compared with the 1957 volume. This seems to have been achieved without sacrifice of comprehensiveness. On the Public Law front, and indeed generally, the year was somewhat less exciting than has recently been the case—but this respite is not unwelcome.

PUBLIC LAW

Summer, 1960

(Without) Comment

"It is impossible to incorporate in an Act of Parliament, when the matter with which we are dealing is the sentence of death, words which have so little meaning and which have so much application." [1]

"Mr. Mike Malloy was a customer of what is, I believe, technically known there as a speakeasy, where he spent the greater part of his time, and, indeed, pursued most of his endeavours. The landlord of the speakeasy, with one or two of his friends, felt that there were opportunities for exploiting the law relating to insurance, and that insurance would provide a profitable investment provided that one eliminated the element of uncertainty which the average life insurance policy involves.

It was thought that as Mr. Malloy was rapidly drinking himself to death it could hardly be regarded as a very exceptional crime if they were to speed the parting guest. They were able to insure Mr. Malloy for 1,788 dollars. The principal members of the club were, with singular appropriateness, the owner of the speakeasy, an undertaker and a taxi driver, and the view was taken that each would be able to contribute to the enterprise his various forms of activity and knowledge which might be required or desirable to help Mr. Malloy on his way.

Mr. Malloy, beyond any doubt, was drinking himself to death. It was felt that the addition of a considerable quantity of free alcohol to his diet would bring about the desired result even if the overcrowded side streets of New York in the early hours did not contribute somewhat fortuitously to what was hoped would happen. I pause to ask the right hon. and learned Gentleman to consider the case as far as we have got, because there are varying definitions of alcohol which come to us in our correspondence. I remember having long discussions with the Ministry of Transport which laid down that

[1] Amendment moved to add to clause 5 of the Homicide Bill the words: "or by the administration of poison or other noxious matter."

to say that "Guinness is good for you" is a perfectly proper and uncontroversial statement, but to say "It is bad for you" is political and that phrase cannot be exhibited upon the bridges or hoardings of British Railways. We are entitled to say that alcohol is good but not that it is bad, but there are people who think it is bad. Whether the administration of a constant supply of alcohol to Mr. Malloy in the form of free whisky, free brandy or other free drinks could be regarded as using a noxious thing would itself have presented a very difficult problem even to the ability of a New York jury, even if the motive were admittedly a criminal one.

However, that problem did not arise in this case because Mr. Malloy flourished on the alcohol. His cheeks grew redder. His self-confidence increased. He came along to the speakeasy every day asking for more alcohol. The club realised that Mr. Malloy was what might be called, in the language of a balance sheet, a wasting asset and that he would probably cost them more in alcohol than the insurance policy was likely to yield.

I am sorry to add, but it is very relevant to the argument, that the club decided to debase the currency of the murder and to replace the perfectly good alcohol by some very bad alcohol. They commenced to use wood alcohol, turpentine and methylated spirits in the form of a mixture, and it was felt that this might secure the desired result. The Minister will appreciate that all this might be regarded as a question of something in the imagination of the drinker and that so long as one thinks it is Romanée Conti, or Berncasteler, or Château Yquem it does not much matter what it is. As the great Dr. Johnson once said, one can, but for imagination, be as happy in the arms of a chambermaid as in the arms of a duchess. But subsequent commentators have suggested that there is less formalism and, indeed, some advantages in the more plebeian embraces, and the mixing of the strawberry leaf with the fig leaf involves a formality which might well be avoided.

In fact, however, Mr. Malloy rejoiced in the alteration to his liquor. He said there was much more kick in the new form of drink, and he spent some considerable time profiting by this while the insurance moneys, in perspective, were being diminished and the club's hopes of revenue were going down. The right hon. and learned Gentleman ought to be able to tell us whether wood alcohol is a noxious thing in that connection and whether an attempt to kill a man by a mixture of wood alcohol, turpentine and methylated spirits would fall within the purview of the provisions before us. . . .

There was then a meeting of the club, and it was felt that more direct action was necessary. On a very cold night in January the members took Mr. Malloy out in a slightly insensible condition. The

undertaker was in charge, and the taxi driver was driving. They laid him out in the cold, and covered him reverently with snow, and then they poured cold water over him in ten degrees of frost and left the body there, confident that nature would do the rest. Their confidence was misplaced. In fact, the undertaker contracted a severe attack of tonsillitis and was ill in bed for some time. Mr. Malloy arrived for his drinks as usual and made some apparently irrelevant comment about a change in the weather.

The right hon. Gentleman will still have to consider whether in these circumstances water could be a noxious thing. With his considerable knowledge of history, he will recall that at one time water was used as a form of torture. It was certainly so used in France for a long time. It will be recalled that the innocent Jean Calas and the guilty Madame de Brinvilliers had to absorb a very large amount of water in circumstances which left them in peril. Frozen water could, in itself, be deleterious to most people except Mr. Malloy.

There is no question that now there was a certain amount of despondency in the club. So depressed were they at the time that I am sure that if the Prime Minister had come along and offered to make them all viscounts if they would give up their activities, they would have accepted, even with some pleasure.

They decided to sub-let the contract, and a couple of gangsters were employed. They also tried the effect of attempting to kill somebody else with Mr. Malloy's card in his pocket. Both ventures, unhappily, failed. Finally, Mr. Malloy was taken out and laid on a kerb, and the taxi, which was ever handy, was run over him several times, fracturing most of the bones in his body, and the club members returned to await the payment of the insurance money. Before the insurance money came in, Mr. Malloy came out of hospital, said that hospital was a very thirsty place, and asked what could be done about it.

At that stage—perhaps it was at a slightly earlier stage in the proceedings—someone with medical knowledge came along and made some comments about botulism, ptomaine poisoning and so on. By reference to a handy encyclopaedia one will find that if sardines are left in a tin long enough they reach the stage of becoming a noxious thing. For some time the club caused sardines to be left in the open on various window sills, and they awaited the time when they could tell from the temperature or the odour which arose, that the sardines could be put into sandwiches for Mr. Malloy.

At the end, those lacking confidence in the expertise of their scientific advisers, suggested the addition of a few tintacks and bits of broken glass. These were added and Mr. Malloy ate this for some considerable time and grew thirstier every time. He said there was

something about sardines which gave one an appetite and when Mr. Malloy said "appetite" he meant thirst.

That was the position when in desperation they took him upstairs, put a tube in his mouth, attached it to the gas and filled him full of gas to the extent that he went to a place from which normally no man ever returns. Nor did he, although he was brought back as a corpse for the inquest. The insurance companies having expressed some little dubiety about it, there was an inquest and then a trial in which all of these complicated questions should have been considered.

Although, let us say at once, we would all deprecate all this, nevertheless there was in the course of it something of the spirit of Samuel Smiles, something of the lessons one draws from Robert Bruce. Having put their hands to the plough, they ploughed the furrow to the end. In the end they found themselves keeping a seat warm, to use the modern terminology.

There it was. What were the noxious things? At what stage of the proceedings would they have come within the purview of the Amendment? Had Mr. Malloy's unhappy demise taken place at an earlier period, would they have come within the Amendment or not?" [2]

Natural, Alternative and Reasonable Meanings

The propriety of sociological or historical inquiries is sometimes said to depend upon the existence of ambiguity in a statute. In *Inland Revenue Commissioners* v. *Hinchy* [3] what was said to be a literal interpretation was given by the House of Lords to section 25 (3) of the Income Tax Act, 1952, which provides that any person who neglects or refuses to deliver a true and correct return shall, if proceeded against, "forfeit the sum of £20 and treble the tax which he ought to be charged under this Act." Their Lordships held that the penalty referred not to three times the tax unpaid by reason of the default, but could only mean three times the total tax liability for the relevant year—a construction which might well be thought (as it was in the lower courts) to lead to an absurd and unjust result. The Act was construed against what the headnote describes as a "background of previous sociology," which involved the Lord Chancellor and Lord Radcliffe in references to what Parliament must or must not have been considering "in the year of Trafalgar and Austerlitz" and some speculation as to whether before the establishment of an effective police force Parliament might rationally have intended to impose savage and indiscriminate tax penalties. These matters, however, were not raised for the purpose of elucidating any ambiguity found in the

[2] 563 H.C. Deb. 242–6 (January 23, 1957) (Mr. Leslie Hale).
[3] [1960] 2 W.L.R. 448.

Act, for the disputed section was specifically held to be unambiguous. Thus to some extent a maxim of interpretation seems to have been inverted. It is frequently said that if words are clear, historical inquiry as to the intentions of Parliament or the circumstances of enactment are irrelevant, and the words must be applied in their natural sense however unjust the consequences. It was because of what were admitted to be remarkable and extravagant consequences where small omissions were made by large taxpayers that the High Court and Court of Appeal had been led to conclude that the words were ambiguous and to hold that " tax appropriate to the undisclosed income " was " as a matter of English . . . at least a legitimate interpretation of the phrase ' tax which he ought to be charged '."

These circumstances would lead anyone outside the law to assert (as at least one letter writer to *The Times* did) that the provision in question, whatever the meaning given to it, must at the least have been initially ambiguous. The reply might be that it cannot be deduced that words are ambiguous in law simply because courts have in fact given them different meanings. Superior courts are there to resolve disagreement and the question of ambiguity must relate to the possibility of alternative constructions present to their own minds, not to the evident fact of differences between constructions already placed upon the words as between one court and another. Still, if that is the wrong sort of evidence as to the possibility of alternative constructions [4] what kind of thing does count for or against the existence of an alternative possibility in the requisite sense?

Lord Reid in the *Hinchy* case, unlike Lord Radcliffe, found it " difficult to believe that Parliament ever really intended the consequences " of the construction which he himself had given to the statute. In this he agreed with the Court of Appeal. He also agreed with them that " One is entitled and indeed bound to assume that Parliament intends to act reasonably, and therefore to prefer a reasonable interpretation of a statutory provision if there is a choice." In the lower courts this presumption had been applied because it was thought that the words were plainly ambiguous. The House of Lords view was that that construction, reasonable as it might be, was not possible since there was no ambiguity and the clear meaning of the words must be applied. What is remarkable is that the conclusion about clear and natural meaning emerges in part from the consideration of historical and quasi-sociological material, rather than being a condition rendering any such inquiries unnecessary.

Reference to " reasonable interpretation where there is a choice " is in one sense misleading. It may not be clear whether reasonable

[4] Or of what was referred to by Lord Reid as a " secondary meaning " and by Viscount Kilmuir as a " recondite secondary meaning " (at pp. 457 and 453).

interpretation is an interpretation adopted for the sake of its lack of unreasonable consequences, or whether it is simply a synonym for true construction. The two may be opposed. In this case their Lordships found that it was not possible to adopt a reasonable interpretation in the first sense. All the same there is something very odd about presenting the resolution of the problem posed by the words in this case as a finding that the words of section 25 (3) are not ambiguous. As an earlier member of their Lordships' House, the Duke of Wellington, observed on a different occasion: If you believe that, you will believe anything.

G. M.

The Draft Constitution of the Republic of Ghana

The draft proposed republican Constitution of Ghana was published on March 7, 1960, and was approved in principle by the National Assembly the following week and by the electorate at a plebiscite held in April. At the same time the electorate chose the Rt. Hon. Kwame Nkrumah to be the first President of the Republic. In June the draft constitution is to be examined in detail by the National Assembly sitting as a Constituent Assembly,[5] and it is intended that the constitution shall come into operation on July 1, 1960.

In its final form the constitution will undoubtedly incorporate the essential features of the present draft. And it will be as much Nkrumah's constitution as the Constitution of the Fifth French Republic is de Gaulle's. Indeed, the name of Ghana's first President will be written into the text of the constitution; and the most striking feature of the constitution will be the extent of the President's authority. Ghana will not be the first republican Member of the Commonwealth,[6] but it will be the first in which all effective executive authority is concentrated in the hands of the President.[7]

The President is to be Head of State, the repository of executive power, Commander-in-Chief (with power to dismiss or suspend any member of the Armed Forces on security grounds) and "Fount of Honour," and except as may be otherwise provided by law he is to act in his own discretion in the exercise of his functions (art. 9 (4)). He will preside at Cabinet meetings; there is to be no Prime Minister. He

[5] The Constituent Assembly and Plebiscite Act, 1960 (No. 1 of 1960), empowered the National Assembly to resolve itself into a Constituent Assembly and in the latter capacity to provide for the holding of the plebiscite. Constitutional Bills are not to require the Royal Assent (*ibid.*).

[6] The continuance of Ghana's membership of the Commonwealth as a republic required the consent of the governments of the other Members. This was obtained at the meeting of Commonwealth Prime Ministers in May, 1960.

[7] Though in Pakistan, where the constitution is at present in suspense, the President wields absolute power for the time being.

will have power to address or send messages to the National Assembly, to attend any of its sittings, to veto any Bill or any part of any Bill, and to dissolve Parliament at any time. He will appoint all the superior judges. All powers in relation to the control of the civil service will be vested in him; a Civil Service Commission, consisting of his own appointees, will assist him in the exercise of these powers. He will be removable only by defeat at a presidential election.

His powers will in fact be appreciably more formidable than those of the President of the United States. Unlike the American President, he will not require legislative approval for his actions in the field of foreign relations [8] or in the making of appointments. Nor is there to be any provision for overriding the exercise of his powers of veto. Furthermore, the draft constitution offers an ingenious solution to the difficulties that have been created by the separation of executive from legislature in the United States, where the President is not infrequently faced with a hostile Congress. In Ghana presidential elections will be geared to parliamentary elections.[9] Whenever the President dissolves the National Assembly, each candidate at the ensuing General Election will be required to pledge himself to support a particular presidential candidate, and the presidential candidate whose supporters win a majority of constituency seats will be declared elected. If no presidential candidate has won an absolute majority the President will be elected by the members of the new Parliament by secret ballot. Within this framework the detailed conduct of presidential elections will be regulated by subsequent legislation.[10]

A President will therefore begin his term of office with the support of a majority in the Assembly; and as long as present political conditions prevail that support will be overwhelming. If he should forfeit the support of the majority during his tenure of office, he will be able to appeal to the people at a time of his own choosing. One of the traditional devices for forcing the issue will not be open to the Assembly, for it will have no power to reduce any Estimates (arts. 31,

[8] Except, presumably, in so far as international agreements concluded by him entail changes in the law to be applied in Ghanaian courts.

[9] Except the election of the first President. In the light of the results of this election the Government may ask the Constituent Assembly to prolong the life of the present Parliament, which is due to expire in 1961 (W.P. No. 1/60 (Accra), p. 11).

[10] The Government propose (W.P. No. 1/60 (Accra), pp. 7–8) that this legislation shall provide that notices of support of a presidential candidate cannot be given without that candidate's consent, and that no presidential candidate can be nominated as such unless his nominators declare their belief that parliamentary candidates in at least half the constituencies will pledge their votes to him.

Election of a new President upon the resignation or death of the incumbent will also be by the Assembly. If at any election of a President by the Assembly no result has been obtained after five ballots, the Assembly is automatically dissolved (art. 12).

32).[11] Taxes will not be leviable except under the authority of an Act of Parliament, but this provision will be alterable in pursuance of a vote at a referendum ordered by the President (arts. 1, 3, 26 (2)). And there is no provision for resignation of Ministers or for a dissolution if the Assembly passes a vote of no confidence in the Government.[12] Ministers must be members of the Assembly (art. 15 (1)),[13] but they will be neither collectively nor individually responsible to it. Hence executive and legislature are to be linked in a manner that recognises the primacy of the executive.

Under the 1957 Constitution, which came into operation on the granting of independence, the legislative competence of the Ghanaian Parliament was limited by provisions guaranteeing freedom from racial discrimination and freedom of conscience and religion, and prohibiting the compulsory acquisition of property except upon payment of adequate compensation that was to be judicially ascertainable. In addition, Bills for the amendment of the constitution and certain other classes of Bills had to be passed by special procedures. The special procedural requirements were removed in 1958,[14] but the constitutional guarantees of individual rights remained, although they could be abrogated by legislation passed by a simple majority. Under the new draft constitution, certain provisions will be alterable only in pursuance of a referendum ordered by the President,[15] and some provisions would appear to be unalterable by any means[16]; but there is to be no justiciable guarantee of fundamental rights. Instead, the President, on assuming office, is to declare his adherence to a set of Fundamental Principles (art. 14), which include most of the substance of the existing constitutional guarantees (though no reference is made to judicial ascertainment of compensation on deprivation of property). Of these Fundamental Principles, some might well have been entrenched as rules of strict law binding both executive and legislature; others resemble the non-justiciable Directive Principles of State Policy that are embodied in the constitutions of India, Burma and the Republic of Ireland. That they are to appear only in a presidential

11 See also art. 34, which empowers the President to authorise, by executive instrument, urgent expenditure for which parliamentary authority has not been granted; and art. 35, which empowers him to grant loans out of any public fund or account.

12 Contrast Ghana (Constitution) Order in Council, 1957 (S.I. 1957, No. 277), s. 7 (4).

13 Contrast the provisions of the United States Constitution (art. 1, s. 6) and the French Constitution (art. 23).

14 Constitution (Repeal of Restrictions) Act, 1958 (No. 38 of 1958).

15 A vote at a referendum may authorise Parliament, as the delegate of the people, to exercise powers reserved by the Constitution to the people (art. 3).

16 *e.g.*, arts. 19 (2), 37 (4), 46 (1), which provide that the salaries of the President, the Comptroller and Auditor-General and Supreme Court judges shall not be reduced during their terms of office. Power to amend these provisions is not expressly reserved to the people (though *cf.* the somewhat ambiguous wording of art. 1) and the power of Parliament to make laws is subject to the provisions of the Constitution (art. 20 (2)).

declaration further underlines the monarchical character of the Ghanaian proposals. The Queen may disappear from Ghana's Constitution, but a republic may have its equivalent of a coronation oath.

Those devices, characteristic of recent Commonwealth constitutions, which still fettered the discretion of the executive in 1957 had been swept away in 1959: the Public Service Commission had been shorn of its executive powers, the Judicial Service Commission had been abolished and senior judicial appointments placed in the gift of the Prime Minister, and the Attorney-General's independent discretion had been subordinated to that of the Prime Minister in the institution of prosecutions for political offences.[17] The new constitutional proposals offer no replacements; presidential discretion will be curbed only by self-restraint and the need to retain the support of a majority of the electorate. The chiefs have already suffered a *capitis deminutio*; the regional assemblies have been abolished; the harried Opposition has gradually disintegrated. The elimination of the Crown will remove the last political symbol that might have tended to dim the mystique of the Convention People's Party and its leader.

Three other features of the draft constitution are worthy of notice. In the first place, express provision is made for the doctrine of binding precedent: the Court of Appeal is to be bound by its own decisions and the High Court by previous decisions of the Court of Appeal, but neither court shall be bound to follow previous decisions of any other court (art. 41). It is proposed [18] that appeals to the Judicial Committee of the Privy Council shall be discontinued on the establishment of the Republic. Secondly, the people emerge as a distinct constitutional entity. They will be the source of sovereign power, acting either through their delegates in the Constituent Assembly and the National Assembly or directly at a plebiscite or referendum. The President will derive his authority from the people, and his relationship with the people will be both formally and politically more significant than his relationship with the legislature. Thirdly, pan-African aspirations find expression in the constitution: the Preamble recites the hope of the people of Ghana "that we may by our actions this day help to further the development of a Union of African States"; among the Fundamental Principles to which the President must declare his adherence on assuming office is the principle "That the union of Africa should be striven for by every lawful means and, when attained, should be faithfully preserved"; and by art. 2 the people, in "the confident expectation of an early surrender of sovereignty to a union of African states and territories,"

17 Constitution (Amendment) Act, 1959 (No. 7 of 1959).
18 W.P. No. 1/60, pp. 11–12.

confer on Parliament the power to provide for the surrender of the whole or any part of the sovereignty of Ghana.

In so far as this draft constitution has a distinctively African flavour, it cannot be assumed that it will be found palatable to other emergent African states of the new Commonwealth. Nigeria, for example, has hitherto shown little enthusiasm for following in Ghana's footsteps; and its own constitution is marked by an elaborate system of checks and balances, guarantees and prohibitions. But political prophecy in the contemporary African scene is the most fatuous of pursuits. The passing of sententious strictures upon untried experiments in young countries is also inappropriate; but many of us will entertain the hope that other constitution-makers will have less faith in their rulers (or themselves) and more confidence in the long-term benefits of legal restraints on the exercise of political power.

S. A. DE SMITH.

POLITICAL PREJUDICE PERPETUATED?

IN the well-known case of *Roberts* v. *Hopwood*,[19] the Poplar Borough Council had exercised its statutory power to fix its employees' wages " as they think fit " by granting a minimum wage of £4 a week to all employees without distinction of sex. The District Auditor imposed a surcharge on the councillors, which surcharge was confirmed by the House of Lords. The council's opinion was that a public authority should be a model employer and that a minimum rate of £4 a week was the least wage which ought to be paid to an adult, but the House of Lords took the view that the Borough Council's discretion must be exercised reasonably, and fixing an arbitrary minimum sum without regard to labour conditions, cost of living, rates paid by other public authorities, and so on, was not a proper exercise of that discretion.

Lord Atkinson said that the council " allowed themselves to be guided in preference by some eccentric principles of socialistic philanthropy, or by a feminist ambition to secure the equality of the sexes in the matter of wages in the world of labour." [20] His Lordship added that a local authority, administering funds contributed by ratepayers, " stands somewhat in the position of trustees or managers of the property of others." [21] The decision was relied on by the Court of Appeal in *Prescott* v. *Birmingham Corporation*.[22] There, the Birmingham Corporation operated a transport undertaking under private Acts of Parliament which authorised it to charge such fares as, with

19 [1925] A.C. 578.
20 *Ibid.* at p. 594.
21 *Ibid.* at p. 596.
22 [1955] Ch. 210.

the licensing authority's consent, it thought fit. The corporation decided to provide free travel on its buses for old age pensioners, and the licensing authority gave the necessary permission. A ratepayer [23] sought a declaration to test the validity of the scheme and the Court of Appeal held that it was *ultra vires*. The court emphasised that a local authority owes a fiduciary duty, analogous to that of a trustee, to their ratepayers and that " to grant free rights of travel " was illegal as it amounted to making a gift of money's worth to a particular section of the community at the expense of the general body of ratepayers. The court also emphasised that it was implicit in the Birmingham Corporation Acts that the transport undertaking was to be run on " ordinary business principles." The court conceded that concessions in favour of children were justifiable on business principles, and no reasonable ratepayer would object to concessions in favour of blind or disabled persons.

On the face of it, the local authority's discretion in both *Roberts* v. *Hopwood* and *Prescott* v. *Birmingham Corporation* was absolute, yet in each case the court restricted the discretion by requiring the local authority to exercise its discretion " reasonably " or " on ordinary business principles." Yet what is regarded as " reasonable " or " ordinary business principles " depends on opinion or policy considerations. In *Roberts* v. *Hopwood*, in particular, the views put forward by the court for saying the council had not exercised its powers " reasonably " were, fundamentally, based on political or policy ideas—that a wage of £4 a week was grossly extravagant, or that wages should not be out of line with those of other public authorities. In effect, the court substituted its own view of what was reasonable for that of the council. In *Prescott* v. *Birmingham Corporation*, as Professor Friedmann has complained,[24] although the court read " ordinary business principles " into its statutory power, " it would be difficult to find any guidance in the court's judgment on the meaning of ' ordinary business principles ' and, in particular, on the point at which differential fares would cease to be permissible as giving away rights of free travel." Unless there is only one tenable view of how ordinary business principles are to be applied in any given situation, it is a matter of policy. To quote Professor Friedmann further: " It is both against the tradition of the courts and detrimental to the development of a healthy relationship between administrative authorities and supervisory courts to distort clear language so as to substitute half-baked policy advice by the court for the decisions of

[23] Since his interests were affected no more or less than those of any other ratepayer, it is strange that the suit should have been allowed without the intervention of the Attorney-General in the form of a relator action.

[24] W. Friedmann, *Law in a Changing Society*, 1959, p. 367.

the elected body—on a national or local level." As Lord Russell put it in *Kruse* v. *Johnson*,[25] referring to the reasonableness of a local by-law, " representatives may be trusted to understand their own requirements better than judges." In any case, one may add, the local electors have their remedy at the polls if they dislike their council's decisions.

Two Court of Appeal decisions (*Re a decision of Walker*[26] and *Associated Provincial Picture Theatres Ltd.* v. *Wednesbury Corporation*[27]) seemed to indicate that when a local authority exercises a discretion, it should not be upset unless the authority has acted in a grossly unreasonable way, but the reaffirmation of *Roberts* v. *Hopwood* in *Prescott* v. *Birmingham Corporation* has received further support by the Divisional Court in *Taylor* v. *Munrow*.[28] Under the Requisitioned Houses and Housing (Amendment) Act, 1955, the St. Pancras Borough Council had power to pay to the landlord of a formerly requisitioned house an amount equal to the difference between the rent recoverable by the landlord and the rent last payable by the licensee under the requisitioning. This applied where the landlord agreed to accord to such licensee the status of a statutory tenant. After the Rent Act, 1957, permitted certain rent increases, St. Pancras Borough Council proposed, in respect of these houses, to meet the increase of rent permissible under the Act out of the rates. The Divisional Court upheld the surcharge made upon councillors of the borough for so doing. Lord Parker C.J. said that " whatever the exact wording of the section may be," [29] when a local authority is paying money out of funds provided by the ratepayers, the council must preserve a balance between the duty it owed to the general body of ratepayers and the duty owed to the particular ratepayers in respect of whom payments are made. Lord Parker resurrected the somewhat hoary dictum of Lord Atkinson about eccentric principles of socialistic philanthropy.

Of course, the real question is not whether the St. Pancras Borough Council was sensible or wise or stupid to take the course it did. In fact, as Lord Parker rightly pointed out, the council paid to the landlords increases permissible under the Rent Act in spite of the fact that many of the houses were in a state of disrepair and, had certificates of disrepair been obtained, the landlords would not have been entitled to the increases till the repairs were done. The real question is whether the council had a right to take the course of action it did.

25 [1898] 2 Q.B. 91, 99.
26 [1944] K.B. 644.
27 [1948] 1 K.B. 223.
28 [1960] 1 W.L.R. 151.
29 [1960] 1 W.L.R. 151, 157.

The court's decision means that as the council had not, in the court's opinion, held the right balance between the general body of ratepayers and the particular group of ratepayers who had been licensees of requisitioned houses, it had no right to act as it did.

Councils of different political persuasions, when asked, in making a decision, to preserve a proper balance between the general body of ratepayers and particular groups of ratepayers, are likely to come to differing conclusions. Indeed, the different views may have been expressed by the opposing political groups in the council chamber. The proper balance cannot be ascertained, as it were, objectively. If the court then is to determine what it regards as the reasonable policy to be adopted within the discretion ostensibly allowed by statute, or what it regards as the proper balance, it cannot avoid the expression of what is, essentially, a policy or political viewpoint. It is highly questionable whether this restriction of local authority discretion—the imposition of the court's view on policy matters over the policy which the council, in its wisdom or unwisdom, has chosen to adopt—is a healthy development in the field of public law. After all, if the policy is thought to be bad, it will be tested at the polls, and, as indeed happened at St. Pancras, its advocates defeated.

GORDON BORRIE.

THE AFRICAN AFFAIRS BOARD—AN ADDENDUM

WE read with interest Mr. Macdonald's article in *Public Law* (Winter 1959) on the African Affairs Board but feel that the picture he gives is not as full as it might be. In the first place, the architects of the Federation were at pains to point out in several statements that acceptance of the African Affairs Board in the constitution was a necessary concession to the British Government. One of the present authors recalls the present Federal Prime Minister [30] describing Federation as the bride and the African Affairs Board as the proverbial mother-in-law! More recently, Mr. Greenfield (Minister of Law), in reply to an interjection from a member of the Opposition, declared [31]: "And there should never have been such a Board. I cannot pretend that I was ever an enthusiast for the African Affairs Board, or for the incorporation of such a body in our constitution but we accepted the constitution and we accepted the African Affairs Board with it. . . ."

It was regarded as a major victory for Lord Malvern at the time of the pre-Federation negotiations that the authority of the African

30 In a speech at Gatooma, S. Rhodesia, during the referendum campaign, 1953.
31 *Federal Hansard*, July 29, 1959, col. 2085.

Affairs Board was whittled down from that of a body existing independently of Parliament to that of a permanent committee of the House. The manner in which it functions is described in Mr. Macdonald's article. The Board did however impose a limitation on themselves. The 1955 Defence Bill was openly admitted to contain a discriminatory clause since Africans were excluded from conscription and the cadet corps. In the debate on the Bill, Dr. Scott (M.P. for Lusaka) said [32]: " It will codify a discrimination. . . ." The Board announced that they regarded the Bill as discriminatory but did not use their constitutional powers to have it amended. This view that the Board should concern themselves with " major " issues only seemed to us to be an unwarranted abdication of responsibility resulting from a narrow conception of what is " desirable in the interests of Africans." [33]

Mr. Macdonald deals with the Board's opposition to the constitutional legislation of 1957.[34] One effect of this legislation was to transform the composition of the Board. Prior to this date the Board was made up of the three European members representing African interests and one African member from each of the three territories. Of these, the European member and the African member from Southern Rhodesia were elected on the common electoral roll and were members of the Government (United Federal) party. The two European members from the northern territories, being appointed by the Governors of those territories, were independent; as were the two African members appointed by the Governors after election by a body designated by the Governor to be representative of Africans. The independent members were thus in a majority of four to two.

The transformation of the Board was dramatic. This makes it more surprising that Mr. Macdonald should have omitted any reference at all to the composition of the Board. One African (Mr. Yamba, Special African Member for N. Rhodesia) expressed his dissatisfaction in a motion [35] calling for the abolition of the African Affairs Board and its replacement by an independent body. The present membership is exactly the reverse of what it was before in that there are now four members of the United Federal Party and two independents (in a House dominated by the U.F.P.). The change has been brought about by the Constitution Amendment Act of 1959 and the Electoral Act of 1959. These increase the number of African members from two to four for each territory, the additional two from each northern territory being elected on the common roll. The result

[32] *Federal Hansard*, July 25, 1955, col. 666.
[33] From s. 70 (a), Constitution of Federation of Rhodesia and Nyasaland.
[34] Readers who wish to form their own judgment as to whether the legislation was discriminatory are referred to *Federal Hansard*, Monday, December 16, 1957.
[35] *Federal Hansard*, July 1, 1959, col. 1153.

is that of the twelve African members in the House seven are members of the U.F.P., four are independent and one is a member of the right-wing Dominion Party. The three African members who sit on the Board are elected from amongst themselves by the twelve African members meeting together with the three special European members.

Sir John Moffat (Special European Member for Northern Rhodesia) has revealed details [36] of this election. In Southern Rhodesia there were four candidates, one to be selected, and of these four, three were members of the United Federal Party and one a member of the Dominion Party. Of the U.F.P. members only one received any votes at all and he received ten; the Dominion Party member receiving the remaining five votes. In Northern Rhodesia there was again one member to be selected from four candidates. Here one U.F.P. man received nine votes and an independent received six. In Nyasaland, with four candidates for one seat, one candidate (U.F.P.) received nine votes, another candidate five votes and one candidate received one vote! It is not unreasonable in these circumstances to agree with Sir John Moffat [37]:

"I think the Government decided who were to go onto the Board and issued their instructions. . . . A Board originally conceived to act as watchdog over Government legislation has been transformed into a standing committee of the Government party." *Quis custodiet ipsos custodes . . .*?

The Government's defence of this position takes several lines. Mr. Lewanika (Special African Member, Luangwa) apparently accepts it as not even requiring justification: "I cannot see any point in him (Mr. Yamba) objecting to the majority of the United Federal Party on the African Affairs Board." [38] Mr. Chipunza (Special African Member, Harare) falls back on a mysterious plea that the charge is unsubstantiated.[39] Mr. Davies, Chairman of the Board, relies on a new conception of the separation of powers: "There are people who are members of parties who can see both sides of the question. There are people who claim to be independent who can see only one side of the question." [40] He explains that the party caucus has never instructed him or any other member that they should vote in a particular way.[41] It seems to us quite likely that such instruction would be superfluous. The comparison between the African Affairs Board and an ordinary standing committee which finds favour with

[36] *Ibid.* July 29, 1959, col. 2064 *et seq.*
[37] *Ibid.* col. 2065.
[38] *Ibid.* July 1, 1959, col. 1173.
[39] *Ibid.* July 29, 1959, col. 2068.
[40] *Ibid.* July 1, 1959, col. 1165.
[41] *Ibid.*

some government members takes no account of the Board's special role. The Board is not part of the normal legislative process, it is not supposed to be a mirror of the Assembly itself. Its role should be conceived as opposed to the government, or at least as a check on the government. It should be there to express the aspirations and protect the interests of the unenfranchised majority.

The Government's attitude to this Board seems to us to be contradictory. This is typical of their desire to have the outward trappings of partnership without any genuine application. They want the Board there but they deny it the possibility of functioning. Thus the same Minister (Mr. Greenfield), quoted in the first paragraph as being unenthusiastic about the Board, has said[42]: "I believe that at least until the 1960 review we should continue to accept it and use the provision that is there and make the best of it." Mr. Macdonald envisages African majorities in the territorial governments taking the place of an African Affairs Board as an effective check on the Government.[43] This ignores the inherent contradiction in government policy explained above. African dominated legislatures would be too effective for Federation to continue to exist at all. There would appear to be no substitute for votes.

R. A. Hasson.
L. A. J. Armour.

[42] *Ibid.* July 29, 1959, col. 2085.
[43] *Public Law*, Winter 1959, p. 373.

AN OMBUDSMAN IN BRITAIN ?

L. J. Blom-Cooper

How best can the individual citizen have his complaints against the state's acts of maladministration investigated and resolved? That injustices by the executive affecting the citizen have existed from the inceptions of government cannot be denied. But it has been in this century, with the variety and quantity of state impingement upon the citizen's everyday life, that awareness of the problem has come to the forefront.

Lord Hewart's *New Despotism* (1929), which uttered a shrill warning of the dangers of delegated powers, may have been hopelessly wide of the mark. But it did serve to focus attention on a growing public concern for the individual's rights against the juggernaut of state activity. The Donoughmore Committee of 1932, with its limited concern for ministerial powers, served only to leave Britain ill equipped in solving a problem that had to be faced squarely with the advent of the Welfare State and its resultant state encroachment upon private activities.

Administrative tribunals in the thirties had already begun to mushroom. In the field of unemployment insurance and contributory and war pensions they had already established a tradition of fair dealing in hearing and determining the citizen's appeals against ministerial decisions. And since the war tribunals of an administrative character proliferated in such fields as rent control, town and country planning, rating and agriculture. Not all were of a uniformly high standard.

But if it was not already clear, the *cause célèbre* of Crichel Down in 1954 made the public abundantly aware that over a vast area of public administration no formal procedure for objecting to administrative actions existed. That much was explicit in the report of the Franks Committee, which by a quirk of fate (or was it by governmental design?) was precluded from discussing the very situation the public considered had prompted the setting up of the Committee.

While surveying fully the scope and conduct of the existing administrative tribunals the Committee prefaced its report by recognising that it was concerned to deal with only one side of the administrative coin. "The subject of our inquiry," it concluded its introductory chapter, "though only part of the relationship between authority and the individual is thus large and important."

* The author is a Barrister-at-law.

Nothing since the Franks Committee has happened to dispel the idea that British administrative law remains defective. Rather the reverse. Cases both in and out of the courts have demonstrated the inability of the citizen to obtain redress for his legitimate grievances.

The operation of Crown privilege to exclude state documents from litigation has prompted the public to view the result of withholding of the documents as a denial of justice. Complaints against authority such as the police or the health services have largely gone uninvestigated or only reviewed by the authority complained of. Only the wealthy, the persistent and the individual with an influential and conscientious M.P. have had hopes of being granted an *ad hoc* inquiry or a hearing under the Tribunals of Inquiry (Evidence) Act, 1921. So it was with Commander Marten over Crichel Down. How many more Crichel Downs have occurred since, which have failed to attract the public inquiry so vital to the exposure of maladministration?

A democracy, said Dr. Brian Chapman in his book, *The Profession of Government*, should be ashamed of even one substantial abuse of administrative power each year. And, as he adds, Scandinavian experience (which has most effectively tackled the problem) tends to show that the number of abuses per head of population is much higher than that. Abuse of administrative power is almost certainly no less prevalent in our society and is a blot upon our democratic form of government.

It was against this background of uneasiness about the administrative law that one or two scholars in this country sought to import foreign notions of dealing with this problem of the modern state. Professor Hamson became a staunch advocate of the French Conseil d'Etat, the most highly developed and most powerful administrative court in Europe. Ever since the ordonnance of 1945 (oddly, promulgated by the provisional Government of de Gaulle) the court has acted as a court of first and last instance over the wide range of cases involving public authorities or in cases between public authorities and private citizens whenever public administration has been involved.

But there has been an underlying current of hostility in Britain to any form of judicial control over administrative action. Implicit in the Franks report is a rejection of any Conseil d'Etat for Britain. Indeed the stamp of approval to the existing tribunals with the newly established Council on Tribunals, to see the tribunals' work is carried out fairly, openly and impartially, has precluded the hopes of establishing any comparable administrative High Court in Britain.

Scandinavian countries offered the only other possible solution in the institution of the Ombudsman. For the record, British readers first learned of the institution in two articles in the *Manchester Guardian* for August 6 and 7, 1957, by Professor David Mitrany. It

is a commentary upon our insularity that it took nearly 150 years before the Swedish Justitieombudsman came to the ears and eyes of the British public.

The office of the Danish Ombudsman (which was established in 1954) is well known to readers.[1] Much less is known of its Swedish counterpart which has provided a model for all such institutions. But there is good reason why one should look more to the modern Danish institution rather than to its Swedish ancestor of the early nineteenth century.

Much of the opposition to introducing an Ombudsman is derived from the administrators themselves. The whole machinery of government would, they claim, be brought to a standstill if they are continually being badgered to explain in detail every administrative act. Worse still, that candour which operates in interdepartmental notes would disappear to the detriment of smooth and efficient government.

These very natural and proper reactions stem from the constitutional position of the British administration, *vis-à-vis* the public, which has its parallel in Denmark but not in Sweden. Ever since 1766 rules have existed in the Swedish Constitution which gave all official documents of state a public character. Every citizen is entitled as of right to have access to public documents subject only to certain specific objections.

Chapter 2, Article 1, of the Freedom of the Press Act provides for such access to official documents. The exceptions to this general right are those documents relating to " the security of the realm and its relations with foreign powers, or in connection with official activities for inspection, control or other supervision, or for the prevention and prosecution of crime, or to protect the legitimate economic interest of the state communities and individuals, or out of consideration for the maintenance of privacy, security of the person, decency and morality."

Memoranda brought into existence by an authority solely for the preparation of a case for the Minister's decision are not official documents. Those documents which are not prescribed as secret must upon request and without cost be made available for examination at the place where they are kept. And for a fixed fee any person is entitled to have a copy of any document.

These are powers which no Britisher or Dane has ever had. The power granted therefore to any single person to inspect state documents would be an inroad upon the inviolability of official documents.

[1] See Hurwitz, " The Danish Parliamentary Commissioner for Civil and Military Administration ": *Public Law*, 1958, p. 236, and Pedersen, " The Danish Parliamentary Commissioner in Action," *Public Law*, 1959, p. 115.

For the Swedes the power of the Justitieombudsman to demand access to state documents was little more than the extant collective right of every private citizen. To the extent that the JO (as he is known in Sweden) could see any document, whether it is secret or not, the principle has been extended.

An Ombudsman was therefore as great an innovation to the Danes as it would be in Britain with a comparable constitution. And the Norwegians, after an exhaustive survey by a Royal Commission on the whole field of administrative law, are embarking on a similar project. The Ombudsman has now become a firm feature of all the Scandinavian countries (Finland has had one since 1919), the cradle of social democracies.

The institution of Ombudsman is so clearly a permanent feature of Scandinavian society that it is odd to hear its detractors, even if the more pejorative remarks are directed at the suggestion of a transplantation in Britain. But the most valid argument against a British Ombudsman (or, as it might have to be, Ombudsmen) is that what adequately satisfies the need of a country of 5 million would be swamped by application in a country of 50 million.

The Times, in its solitary comment on the Ombudsman on January 13, 1960, provided the characteristic counter-attack to the fulsome support for the institution given elsewhere. That newspaper's leader claimed that the main difficulty would lie in the administrative pressure the welter of complaints would provide and would lead to the same defects of the civil service as it sought to cure. But, as *The Economist* pointed out (January 30, 1960), this argument is to stand logic on its head. It is tantamount to saying that because the demand would be overwhelming the need should not be supplied at all.

The need is there and it is urgent. It must be catered for, while the procedure for transplanting the Ombudsman must be carefully tailored according to the cloth of the British people. There can be little doubt that we could not expect one man even by swelling the ranks of his staff tenfold to cater for the volume of complaints this island people would be bound to provide.

It is vital that not only should the Ombudsman be a highly respected member of the community but that he should have a tight little department over which he can preside with comfort. Otherwise civil servants, who have daily to make decisions, would be conscious of something like the Chinese Control Yuan (born during the Han dynasty, 206 B.C.–A.D. 220) which is a parallel branch of government, constantly looking over their shoulders. It is good that a civil servant should be aware of a public watchdog over his acts, but a bloodhound sniffing around as the civil servant makes his decision would be greatly inhibiting on governmental action.

One major suggestion, which *The Economist* favours, is to limit very strictly the field of the Ombudsman's activity. The selection of cases for investigation would not be based on any defined principles but would approximate roughly to the suggested seriousness of the injustice. The less flagrant abuses of administrative power could be left to the existing agencies, namely, M.P.s, Citizens' Advice Bureaux and other social work organisations.

There is certainly much merit in such a proposal. It would mean the maintenance of a single man instead of a proliferation of regional Ombudsmen which would run the serious risk of depersonalising the institution. The Ombudsman must be a known man of absolute integrity in the eyes of the public and the civil service. If he ever became a department the value of the institution would disappear. A bureaucracy upon a bureaucracy spells inanition.

But at the same time high selectivity would breed its own poison. A grievance unanswered because of its initial comparatively low priority remains a grievance. It is imperative that every citizen with a grievance against state administration should feel that an independent person has investigated and reported on his case. And any process of selection on first impression can be a sieve with too large holes. A grave injustice may slip through for want of closer examination. As soon as such a case occurred the institution of Ombudsman would be in danger of falling into disrepute.

That is a risk that society should not be asked to run. The institution is too valuable in protecting the rights of the individual to be put in jeopardy. How then can we Anglicise this Scandinavian institution? The natural place to look is to the judiciary.

The judges have traditionally been the protectors of the citizen's rights against incursion by the executive agents of the state. It was in fact the alliance of the common law with Parliament which won for Parliament its legal supremacy over the Crown. That alliance could be renewed in so far as any Ombudsman could ultimately be answerable to Parliament, and the courts could materially assist the "Parliamentary Commissioner (or Councillor)" in reporting and advising on the complaints of the citizen against the state.

The common law has clearly grown too old and stiff to deal with the development of administrative law. The refusal by the Franks Committee to set up an administrative division of the High Court was a recognition of the development of administrative law largely outside the purview of the judiciary. The common law has no longer the youth and suppleness to combat the modern invasion of the citizen's rights by administrative power. Parliament can repay its debt by infusing new life into the common law by handing to the

courts the actual task of investigation of complaints under the guidance of the Parliamentary Councillor.

If it is objected that the common law has never been investigatory in its function that is no reason for refusing to develop a neglected side of the legal system. Whenever a tribunal of inquiry or *ad hoc* inquiry is instituted the invariable practice is to appoint a High Court judge to preside over the inquiry. It is a public recognition of the impartiality and independence of the judiciary which can conveniently be harnessed for the task of inquiring into the citizen's complaints under a permanent form of tribunal.

But clearly one man of outstanding qualities—he need not, it is suggested, be a man of the law—should be the Parliamentary Councillor appointed by Parliament to whom his reports could be made. The courts would function collaterally with this man and his small specialised staff.

Any complaint or grievance by the citizen would initially come to the Parliamentary Councillor's office where the case would be examined and the complainant, if necessary, interviewed. If the case is one requiring examination the matter would be handed over to a High Court judge under the direction of the Lord Chief Justice—in Scotland the Lord-Justice Clerk—who would work in collaboration with the Parliamentary Councillor.

It would be for the Parliamentary Councillor to hear the complainant and for the judge, apprised of all the information, to call for and investigate the public documents and the detailed explanations from the relevant government department. The High Court judge would report his findings with reasons to the Parliamentary Councillor who would then consider what recommendations, if any, should be put before Parliament.

The Parliamentary Councillor would have no executive power beyond that of demanding the right on request from the judge to see all public documents. Any right to refuse to produce a document would be decided by the High Court. That apart, his powers would be to report to Parliament on the particular case he thought should be drawn to Parliament's attention. In any event he would be liable to produce an annual report setting out every case which has been fully investigated.

Before any report is made public—ultimately every report must be published—both the administration and the complainant shall be advised of the report's contents. Where an adverse ruling is made against the administration the government will be given an opportunity of rescinding any decision or of satisfying the claim of the complainant.

These are necessarily tentative suggestions but they have the

advantage of combining the virtues of the Ombudsman with his wide investigatory powers and the traditional (and not by any means misplaced) British regard for the judiciary. It is certain that without some such official, wherever there is no statutory right to a hearing before one of the existing administrative tribunals, many citizens will continue to have their grievances unassuaged.

It is admittedly rare for any civil servant to act maliciously towards a citizen and so deprive him of his rights. But what is more common is that the citizen is increasingly liable to be accidentally crushed by the hard-worked officials in the vast panoply of public institutions. It is high time we provided adequate machinery to guard against these risks. None should welcome it more than the administrator himself who will be relieved of persistent claims that he has behaved unfairly. The Parliamentary Councillor could in fact become the protector of the civil servant against frivolous and unwarranted attacks as well as the watchdog of the public in cases where a grievance is substantiated.

RESTRICTIVE AGREEMENTS AND THE PUBLIC INTEREST: A CRITIQUE OF THE LEGISLATION

B. S. YAMEY

IN the United States of America the courts, interpreting the Sherman Act of 1890, have from an early date applied the rule of *per se* illegality to the most important categories of restrictive business agreements which in this country are registered in terms of the Restrictive Trade Practices Act of 1956. The American courts need not inquire into the possible merits or demerits of the restrictions before them; provided they are found to be in restraint of competition, a finding of illegality follows and the legal sanctions apply. This unwillingness of the courts to distinguish between good and bad collective restrictions does not seem to have led to any observable mal-functioning of the American economy, nor to any noticeable deprivation of American consumers; and the *per se* rule is very generally supported by independent observers.[1]

The Restrictive Trade Practices Act, as is well known, specifies seven possible grounds on which the Restrictive Practices Court (henceforth "the Court") may find that a registered restriction is not against the public interest. (For ease of reference, the relevant part of section 21 (1) of the Act is reproduced at the end of this article.) The Act, that is, specifies seven categories of meritorious consequences that may possibly flow from collective restrictions on competition. If the Court is satisfied that one or more of these consequences are present, the relevant restriction is not deemed to be against the public interest provided, further, that the consequences

* The author is Professor of Economics in the University of London. He writes: "I have been greatly assisted by the comments of Professor William Letwin and Mr. M. H. Peston on a draft of this article."

[1] But Professor Donald Dewey in his interesting book, *Monopoly in Economics and Law*, 1959, p. 166, writes: "The economic case for making price fixing a *per se* offence, however, is extremely weak. In times of widespread unemployment, the state's economic policy is so patently bankrupt that it is presumptuous for public officials to harass firms which are trying to save themselves by price-maintenance schemes. In the case of a 'sick' industry the plight of its masters and hands may well justify whatever good they can do for themselves by collective self-help, and finally, of course, there is no equity in suppressing a particular cartel unless one can prevent the industry from being victimised by combinations of its customers and suppliers." It will be observed that none of the classes of situation mentioned is directly covered by a provision in s. 21 (1) of the Restrictive Trade Practices Act.

are not secured unreasonably at the expense of detriments to the public.

With the American experience in mind, is our different approach necessary or desirable? I do not propose to answer this question and all its implications, but only to write around it a commentary on business restrictions' seven sources of salvation. The article is mainly concerned with economic questions, and does not pretend to consider fully the questions of legal interpretation which the first handful of case reports has thrown up.

It is not possible to find in the parliamentary debates any summary exposition of the rationale of the set of seven justifications. Without straining the language of the Act unduly, a loose paraphrase of the provisions of section 21 (1) might run as follows: Competition between firms is generally in the best interests of consumers and the economy. However, in some situations particular restraints on competition may advance the interests of consumers [paragraphs (*a*) and (*b*)].[2] Moreover, marked elements of monopoly (concentration of sufficient selling or buying power in a single firm) may affect the working of competition in some markets, and may cause results to deviate from the desirable competitive pattern; restrictions on competition may counter-balance these deviations and so acquire merit [paragraphs (*c*) and (*d*)]. Lastly, the promotion of the interests of consumers of particular products in the home market and the establishment of more competitive conditions are not paramount objectives of economic policy. Restrictions on competition which avert local unemployment or maintain exports are to that extent in the public interest [paragraphs (*e*) and (*f*)—which constituted a single paragraph in the original Bill]. There is a seventh justification, that is, the justification of one restriction on the grounds that it is necessary for the operation of another which satisfies one or more of the other criteria. This seventh consequential justification, and also the balancing provision in section 21 referring to detriments to the public, are not considered further in this article, which focuses on the six substantive criteria or tests of the public interest.

I

If it is accepted that business restrictions should be judged individually on their merits, one cannot take exception to the inclusion of paragraphs (*a*) and (*b*) as justifications in section 21 (1), unless one

[2] The reason for the separate specification of para. (*a*) is not clear, since avoidance of injury to the public would seem to qualify as a "specific and substantial benefit" under para. (*b*). For an attempt to deduce a more restrictive interpretation of para. (*b*) from the inclusion of para. (*a*) as a separate justification, see argument on behalf of the Registrar of Restrictive Trading Agreements, *Re Blanket Manufacturers' Agreement*, L.R. 1 R.P. 208, at 234.

takes the extreme view that these restrictions on competition can never promote the interests of consumers.[3] With the American experience of prohibition of restrictive agreements, and assuming that it is within the sphere of the functions of government to provide for the safety of consumers and their property, this extreme view seems attractive. But it cannot be fully supported or sustained by an appeal to incontrovertible propositions of economic analysis.

It cannot be ruled out, in principle, that restraints on competition may produce results which in the long run would be in the interests of consumers of the products in question, even when in their immediate effects they are demonstrably contrary to their interests. It is difficult to assess whether these conceivable long-run benefits have occurred or are likely to occur as a consequence of a particular restriction applied in a particular way in a given setting. Competent observers may well differ in their assessments of some cases. And even when there is agreement that the restriction is in the long-term interest of consumers, judgments may differ as to the relative weights to be given to the immediate detriments and the longer-term benefits.

The view is embedded in economists' thinking that unrestricted competition provides the strongest incentive to efficiency, economy in the use of resources, and the adaptation of production to meet the variegated and changing requirements of consumers in the market. Each competitor is aware that reductions in his costs or improved adaptation of his products to consumer requirements strengthens his competitive position; and he can take advantage of his improved position in any way he sees fit. This provides an inducement to efficiency (to limit the discussion to this aspect); the fear that his competitors may improve their efficiency to his disadvantage sharpens the edge of this inducement. A common price agreement blunts this incentive. Though improved efficiency raises the firm's profit per unit sold, it does not produce a larger volume of sales as the firm cannot reduce its price so as to capture business from its competitors. Both the reward for greater efficiency and the penalties for inefficiency are reduced and delayed.

The force of arguments of this kind cannot be gainsaid, and can readily be backed up by reference to experience. This is the nub of the economist's indictment that restrictionism is against the interests of consumers. But all economists are not agreed that this

[3] Para. (*b*) refers to the public as "purchasers" or as "consumers or users." This distinction will not be considered here; it is unlikely on present indications that the Court will place a high value on benefits to intermediate purchasers (*e.g.*, processors or resellers) unless these are transmitted to the final consumers or users. It is a weakness of the paragraph that it is so widely drawn in this particular respect. (For some comment on the "public as purchasers," see *Re Yarn Spinners' Agreement*, L.R. 1 R.P. 118, at 190–191.)

is the end of the story, even when they are satisfied that it provides the best account of the effects of restrictive agreements at a given point of time with a given technology and production capacity in an industry. When dynamic considerations are taken up, other possibilities present themselves. For example, it may be that unrestricted competition may force down prices so far that the firms do not have the resources (from profits) to engage in activities which are likely to raise their efficiency or improve their ability to satisfy consumers' requirements more closely; unrestricted competition may also increase risks and reduce returns on capital, and thereby reduce the incentive to embark on costly operations such as modernisation of equipment and research into processes and products which, when successful, reduce costs and improve products. A cognate argument (or analysis) points to the possibility that restrictions on competition may "improve" the long-term adjustment of production capacity to total demand, with the consequential reduction in costs and avoidance of the more extreme price fluctuations. On the other hand, restraints on competition may serve as a continuing support of the less efficient, and induce general complacency and inertia.

The merits, either generally or in particular situations, of this type of argument about the alleged long-term benefits of restriction, and also of other arguments that certain restrictions are in the interests of consumers, cannot be explored further on this occasion.[4] These arguments have so far not found much favour with the Court, which, except in respect of one minor restriction, has not found that consumers would be deprived of benefits or advantages by the abolition of the restrictive agreements which have been before it.[5] It is not possible to say whether this reflects a general attitude of the Court, or whether the rejection of the arguments was prompted by the specific features of the industries and agreements before it. Reference may be made, however, to one straw in the wind—if, indeed, it is a straw. In respect of some of the points argued in favour of restrictions, one may detect in the Court's observations a certain unwillingness to entertain lines of argument involving speculation about hypothetical situations and about changes which could not be quantified.[6] Yet reasoning about hypothetical situations and

[4] The preceding analysis is an example of partial equilibrium analysis in which a particular market is looked at in isolation from the rest of the economy. In Section III, below, a brief look is taken at the effects of restrictions on the interests of consumers in the economy as a whole.

[5] The exception is the "minimum weight" restriction of the blanket manufacturers.

[6] Thus in the course of rejecting certain arguments, the Court said: *Re Chemists' Federation Agreement (No. 2)* L.R. 1 R.P. 75, at 109–110: "The extent to which there might be such a reduction [in chemist shops in country districts] as a result of increased competition had to be left to guesswork"; *Re Scottish Association of Master Bakers' Agreement,* L.R. 1 R.P. 347, at 384–385: "In any case no attempt was made, and we doubt if it could be made, to assess the probable

assessment of imponderables necessarily underlie its findings, in two cases, that other criteria [paragraphs (*e*) and (*f*)] have been satisfied.[7] It may be that the use of the verb "would" in paragraph (*b*) and of "would be likely" in paragraphs (*e*) and (*f*) accounts for the somewhat asymmetrical approach to be detected in some of the Court's judgments. If this is so, the words used in the Act are unfortunate; for the nature of the economic evidence and the character of economic reasoning which seem to be relevant in the application of *all* the criteria are essentially the same.

II

The justification of restrictive agreements set out in paragraph (*c*) of section 21 (1) has not yet come up for judicial consideration. This paragraph derives directly from the definition on one of the four categories of circumstances specified by the Monopolies Commission in 1955 as providing possible grounds for the continuance of the range of restrictive agreements examined by them.[8] Its intention seems reasonably clear. Suppose a large supplier has been tying up a significant number of dealers by means of exclusive dealing or similar arrangements. Each of its smaller competitors may find itself progressively being excluded from the market. Alone, each of these firms cannot offer uncommitted dealers as attractive arrangements as those offered by the dominant firm. Together, however, they may be able to do this, and so be able to compete more effectively, and prevent the further pre-emption of the market by the large firm.

As such restrictive agreements counteract measures which prevent or restrict competition, they may be said to promote the interests of the trade purchasers and hence of final consumers. For this reason, however, the provision of a separate paragraph to take care of these cases seems otiose. If the test is the promotion of the interests of consumers (or buyers), this test is explicit in paragraph (*b*). The benefits to be derived from the restriction are "specific," and unless

extent of any such apprehended diminution" [in the quality of bread]; and, "Nor is it possible to estimate to what extent, if any, an assumed but indeterminate and indeterminable lessening of the existing measure or spirit of co-operation within the industry itself would remove a specific and substantial advantage. . . ."

[7] *Cf.* the references in footnote (6) with the following: *Re Yarn Spinners' Agreement,* at p. 192: "We ought not to disregard these other factors [affecting unemployment] because they are unquantifiable but should make the best estimate we can of their effect"; and *Re Water-Tube Boilermakers' Agreement,* L.R. 1 R.P. 285, at p. 345: "It is not possible to express any quantitative views upon it" [the expected reduction in exports].

[8] Monopolies and Restrictive Practices Commission, *Collective Discrimination* (Cmd. 9504, 1955, para. 240 (*d*): "Where the arrangement is a necessary means of enabling smaller concerns in a trade to compete effectively with a very large concern in that trade which is itself resorting to restrictive practices."

they are also "substantial" the case for its continuance is weak. If, on the other hand, the test is not to be the conferment of benefits or advantages on customers, the public interest in the continuance of the restriction is highly doubtful.

It is arguable that the elimination of all the restrictive measures, both those practised by the large firm and those of the concerted group, would be preferable to the presence of the two sets of counteracting restrictions. But the Court has no jurisdiction over the restrictive measures of single firms. If the firm is sufficiently large, it could qualify for inquiry by the Monopolies Commission.[9] It would call for delicate timing to have action taken simultaneously against the large firm and the collective restriction of its competitors; and while one set of restrictions were allowed to continue, there would be "justification" for the other set. This is a type of situation which would be handled more effectively if the *industry*, rather than the particular firm or restrictions, were the subject-matter of investigation and decision, as was the case before the Restrictive Trade Practices Act changed the procedures introduced in the Monopolies Act of 1948.

Paragraph (*d*) covers situations in which firms are allowed to combine to secure "fair terms" in their dealings with a dominant customer or supplier. (The subsequent discussion is confined, for simplicity, to situations with dominant customers.) This paragraph has been considered by the Court in *Re Water-Tube Boilermakers' Agreement*.[10]

Suppose a product is bought by processors or dealers and resold (whether in processed form or not) by them to the final consumers. If "fair terms" means higher prices for the product, it is not necessarily in the interests of those consumers that the producers of the products should obtain fair terms from the processors or dealers (including in their number a preponderant processor or dealer). The processors or dealers may pass on to consumers part of the direct benefits of having negotiated unfair terms with their suppliers; and even if they do not, the consumers are not harmed. Of course, if the failure to negotiate fair terms brought in its train a reduction of efficiency (through inability to finance modernisation of plant, for example), it may be said that a collective agreement remedying the situation would confer benefits on consumers. But once again, if the test is the interests of consumers, there would be no need for a

[9] Para. (*c*) does not specify a large or dominant firm, unlike the corresponding provision in the recommendations in the 1955 report of the Monopolies Commission (see preceding footnote). For this reason the paraphrase of para. (*c*), on p. 153, above, is rather free.

[10] L.R. 1 R.P. 285, at pp. 338–342.

separate paragraph (*d*), as paragraph (*b*) is both unambiguous in this respect and adequate for the purpose. If, on the other hand, the interests of consumers are not to provide the relevant criterion, the argument for the inclusion of paragraph (*d*) is weaker. Considerations of equity as between sellers and the preponderant buyer, or as between the preponderant buyer and other buyers who are individually too weak to secure unfair terms, may seem to provide a justification for a separate paragraph (*d*). But the Court's interpretation of the paragraph, in the judgment in the *Water-Tube Boilermakers*' case, seems to give little weight to such considerations *per se*.

In this judgment the Court, somewhat unexpectedly, seemed to hold that it was not sufficient for the application of paragraph (*d*) to establish that the restrictive arrangements were necessary to enable the sellers to negotiate fair terms with the preponderant buyer. Rather, it held that it was the presence of special circumstances which validated the particular defence in the case before the Court. These were that the arrangements contributed towards a result which was desirable in the "national interest."[11] Though the discussion of this point can be criticised, it does suggest that the Court will not necessarily apply paragraph (*d*)—and hence probably not paragraph (*c*) either—unless interests are promoted which are wider than those of the parties to the agreement. It would be difficult to infer from their public statements whether this was the intention of those responsible for the legislation.[12]

Paragraph (*d*) refers only to the preponderant buyer and the negotiation of fair terms with him: the negotiation of fair terms with other buyers is not mentioned. It would seem reasonable to suppose that the purpose of this paragraph—or one of its possible purposes—was to cover situations in which individual sellers were in a position to negotiate fair terms with the smaller buyers but were unable, without concerted action, to negotiate such terms with the largest buyer because of his superiority in bargaining strength, a function of the size of his purchases or of his ability to produce for himself. In the *Water-Tube Boilermakers*' case, however, the Court was prepared to apply the paragraph to a situation in which the terms

[11] It was in the "national interest" that the six firms in the agreement should remain in business during the anticipated period of recession. The Court did not use the words "public" or "consumers'" interests, and did not accept the defence of the arrangements under para. (*b*) of s. 21 (1). The meaning of the "national interest" in the context is one of several puzzles confronting the student of the judgment. (See my note on this case in *Modern Law Review*, January 1960.)

[12] "We want to deal with cases where there is a strong or perhaps a monopoly buyer. . . . We have to deal with the case of a supplier who is without access to other markets and is at the mercy of a monopoly buyer." (Mr. P. Thorneycroft, Parl.Deb. (H.C.) May 3, 1956, col. 670.)

obtainable in dealings with all buyers would be less than "fair" (on the Court's definition of the term), because of inadequacy of total demand relatively to the production capacity of the industry. But it disqualified the defence of the agreement precisely on the grounds that the arrangements were unreasonably wide for the purposes of paragraph (*d*), since they affected dealings not only with the preponderant buyer but also with other buyers. It would appear that the arrangements might have been condoned in terms of paragraph (*d*) if they had related only to transactions with the preponderant buyer, with the curious implication of the approval of arrangements involving discrimination against the preponderant buyer (as opposed to the protection of non-preponderant buyers against willing or unwilling discrimination in favour of the preponderant buyer). This discrimination would not have mattered much in the circumstances of the case, because the preponderant buyer (the nationalised electricity industry) was not in competition, as seller of its products, with the non-preponderant buyers of water-tube boilers. The interesting question remains: what is the reasonable width of a restrictive agreement when the largest buyer is a direct competitor, both as buyer and as seller, of the other buyers? The test prescribed in paragraph (*d*) is imprecise in the absence of a clear indication of the purpose of providing the defence. In fact, nothing far short of a market-wide agreement would seem to be equitable as between buyers if paragraph (*d*) is to be applied to conditions of a buyers' market in which sellers are in a weak position against all buyers. Moreover, unless the non-preponderant buyers were insignificant in total, a partial agreement would be of little use to the sellers in these conditions, and the agreement itself would be under severe internal strain.

III

The inclusion of paragraphs (*c*) and (*d*) in section 21 (1) may be interpreted as an attempt to bring conditions and results (prices, etc.) in particular markets closer to what they might have been had the markets been more competitive in structure (that is, without the dominant competitor, supplier or customer). This touches on interesting issues which have engaged the attention of economists for many decades.

There is a body of propositions in economics (in the analysis of general equilibrium conditions) which suggests, subject to some qualifications, that competitive conditions in all markets result in cost–price relationships which secure the optimal allocation of resources among the numerous competing uses, and that in consequence the welfare of consumers is in some sense maximised. A

restraint on competition in one market causes a deviation from the ideal cost–price relationships and hence is incompatible with the achievement of the theoretical optimum. In economies such as ours there are many causes of such deviations (*e.g.*, business monopolies, labour monopolies, tariffs, taxes and subsidies). Now it has been shown in the more recent development by economists of the "general theory of second best" that it does not follow that the correction of a deviation in one particular market necessarily causes the economy as a whole to move closer to the optimum (even if the position of consumers in that market is improved): it may bring about a further departure from it.[13] Similarly—and this is perhaps more relevant to paragraphs (*c*) and (*d*)—the imposition of a restraint on competition in one market may possibly mean a step nearer to the economy-wide optimum, even if the consumers in that market are made worse off. Two points about this analysis are important. First, there is no *a priori* way to judge as between various situations in which there are different collections of deviations from the optimum conditions in individual markets; and empirical investigation is beset by tremendous difficulties. Secondly, the analysis refers to the optimum allocation of resources in a static environment, and its conclusions do not necessarily apply to a world in which there must be adjustment to changes in consumer preferences, and in which much activity is directed at bringing about changes in products, methods of production and consumer preferences. The analysis is therefore of little direct assistance in framing or in implementing a policy for the control of restrictive business agreements.[14]

In the context of the present legislation, it hardly seems open to the organisers of restrictive agreements to argue that their removal would shift the economy as a whole further away from its "optimum." It would be difficult, if not impossible, to establish this conclusion in a particular case; and, more generally, it would be difficult to bring the achievement of the theoretical optimum within the provisions of section 21. Even if it were agreed that the removal of a restriction would cause a movement away from the optimum, its avoidance would not readily yield "specific and substantial benefits or advantages" to "consumers . . . of any goods." In terms of general equilibrium analysis, the removal of the restriction would set in motion economy-wide changes percolating into all inter-related markets; some of these changes would benefit the

[13] See R. G. Lipsey and K. Lancaster, "The General Theory of Second Best," *Review of Economic Studies*, Vol. XXIV (1957) pp. 11–32.

[14] The analysis, even within its own limitations, does not point to the simultaneous prohibition of all restrictive agreements, since in the economy there are numerous other deviations from the cost–price relationships necessary for the "optimum" allocation of resources.

consumers of some products and others would harm the consumers of other products.[15] But the harm done to consumers would be dispersed throughout many markets, and its incidence difficult if not impossible to pin-point and to assess; hence the avoidance of this harm by the continuation of the restriction would scarcely deserve the appellation "specific and substantial."

In short, the conclusions of general equilibrium analysis in economics, and the "welfare" propositions derived from it, appear to be inapplicable to the assessment of restrictive agreements under the legislation of 1956.[16] This conclusion is reinforced by the very nature of the case-by-case method embodied in the legislation; at least as far as it concerns the "beneficial" effects of restrictions,[17] the approach seems to rule out of consideration the economy-wide implications of particular restrictions, and to focus attention on the consequences of the restriction in the more confined area of the industry or trade directly affected by them.

IV

In paragraphs (*e*) and (*f*) of section 21 (1) the promotion of the interests of consumers in the home market is clearly not envisaged, and other policy objectives or social goals are introduced. These are the avoidance of persistent local unemployment and the promotion of exports. It is because these objectives impinge closely on general economic policy that there has always been some uneasiness about these two paragraphs even though the main political parties agreed that they ought to be available as defences for restrictive practices. Yet it is worth recalling that the Monopolies Commission, in the majority report on *Collective Discrimination*, did not specify the avoidance of unemployment as a possible ground of exemption for restrictive agreements, even though some types of restriction considered in their report could have the effect of maintaining employment in particular areas. It is interesting, also, that agreements containing restrictions affecting exports only are exempted from registration under Part I of the 1956 Act, and hence are outside the jurisdiction of the Court. They are registrable with the Board of Trade which is empowered to refer them, at its discretion, for investigation by

[15] It should be noted that para. (*b*) of s. 21 (1) refers to the users of "any goods," and not only of the goods directly affected by the restrictions in question.

[16] It would seem that it would also be unreasonable to hold, solely on the basis of the general-equilibrium type of analysis, that a particular restriction caused "detriment to the public" because of mis-allocation of resources; this is so because the removal of particular restrictions may cause a further departure from the "optimum" when other deviations are present in the economy.

[17] This qualification is necessary, because the balancing provision in s. 21 (1) concerning detriments refers to the "public" (*i.e.*, generally) and also to the public as consumers of the goods in question.

the Monopolies Commission, with remedial action to be taken by the government, again at its discretion. The reasons for this segregation and separate treatment of export agreements include the following, in the words of Mr. Thorneycroft, then President of the Board of Trade [18]: "The essential point is that pure export agreements raise issues somewhat different from those which are made justiciable under the Bill. They raise great issues of commercial and sometimes even of foreign policy." It should be clear that agreements with restrictions affecting both the home and export markets may raise similar issues, and yet will have to be dealt with by the Court.

Several types of restrictive agreement may have the effect of averting unemployment; and given a high degree of localisation in the industry, the abolition of such an agreement could precipitate significant regional unemployment. In appropriate, and probably uncommon, circumstances an aggregated rebate scheme or exclusive dealing arrangements operated by United Kingdom suppliers could have a tying effect on domestic dealers (and hence consumers), and so make it difficult for otherwise viable foreign suppliers to enter the market. The abolition of such arrangements could cause unemployment if it should cause a large displacement of domestic production by imported supplies. Again, a minimum price scheme or market-sharing arrangements may keep in being the firms in one region which would succumb or contract if more efficient firms in other regions were relieved of the restraints. It is also conceivable that a minimum price scheme may be able to sustain the earnings of firms in an industry during a period of recession, and so enable and encourage these firms to keep a larger labour force on their pay-roll than if the market were further demoralised by more severe reductions in price.

It is not enough to show that the abrogation of the agreement would cause a serious reduction in the numbers employed. The justification of an agreement in terms of paragraph (*e*) requires, further, that the unemployment, avoided by its operation, would be "persistent." This requirement must be seen in the context of general government policies which have the maintenance of a high level of employment as an objective with a high priority, and which include measures designed specifically to alleviate local unemployment. A finding that the abrogation of an agreement would be likely to cause "persistent" unemployment would seem to entail one or other of three attitudes or positions taken by the Court. The first is that

[18] Parl.Deb. (H.C.) March 6, 1956, col. 1943.

the Court takes the view that in the particular case the government would be unable to cope with the problem of the re-employment of the unemployed within a period of time short enough to disqualify the application of the adjective "persistent" to the condition of unemployment. The second is that the Court takes the view that what it regards as serious and persistent unemployment would not qualify for direct or indirect government intervention, and that, therefore, the government would not act. The third is that the Court takes the view that it should not take cognisance of measures which might be taken by the government. The last position seems inapplicable, since some government action (though not necessarily its details or its prospects of success) is likely to be "reasonably foreseen" at the time of legal proceedings; and it would be inappropriate to ignore one of the key variables in the situation. Each of the first two positions, on the other hand, raises very wide issues of government and administration, a conclusion which is not surprising in view of the involvement of the judiciary in economic policy-making in terms of the Act. What the Act does not provide for, is for co-ordination of the decisions of the different decision-making bodies bearing on the common problem.

V

Paragraph (*f*) relating to exports reflects the post-war British preoccupation with balance-of-payments problems, and the general disinclination to introduce measures which might aggravate these problems. In the words of Mr. Douglas Jay [19]: "I think that as this country's balance-of-payments situation at the moment is so difficult and likely to be so difficult for as long as we can foresee, we cannot afford the luxury, so to speak, of breaking up restrictive agreements which may be undesirable in themselves if they are going to have a substantial and serious effect on our export earnings."

It is not inevitable that this country will always have difficulty in balancing its external accounts satisfactorily, as recent experience already shows. The rapidity and unexpectedness with which changes can occur are illustrated by the displacement of the world's "dollar shortage" by a United States foreign exchange problem. The Court can hardly be expected to allow for the changing fortunes of the external balance, or for changes in government policy affecting foreign receipts and payments. Paragraph (*f*), moreover, does not refer to the balance of payments, but merely to exports, that is to say, only one (albeit the major) item on one side of the balance-of-payments account.

[19] Parl.Deb. (H.C.) May 3, 1956, col. 679.

Even if it is accepted that the strengthening of the balance of payments and of the foreign exchange reserves are necessary objectives, serious criticisms can be levelled against the exports paragraph. First, given the objectives, the particular justification for restrictive agreements ought in logic to be available for restrictions which curtail imports as well as for those which encourage exports. The maximisation of exports is not a sensible objective in itself. This leads to the second criticism, which is to the effect that the contribution of a given segment of exports to the improvement of the balance-of-payments position is not measured realistically by simple reference to the foreign exchange receipts yielded by it. In so far as the segment of exports contains imported materials, the gross value of the exports is an obvious overstatement of the contribution. This consideration is important in this country with its heavy reliance on many imported raw materials. The gross value is also an inflated figure to the extent that the exports have absorbed domestic raw materials and labour which, but for their particular use, might have been used to produce other exports or other goods to displace imports. In short, the calculation of the net contribution to the foreign exchange position of a particular segment of exports is a complex operation; and emphasis on the value of exports is misleading. The value of exports may be more easily measured than the net contribution to the improvement of the balance of payments; but it is the latter which is relevant to the apparent purpose of the inclusion of paragraph (*f*). In any case, *prospective* changes in the former are no more objectively measurable than changes in the latter; and the paragraph concerns likely changes and not recorded experience. Thirdly, the paragraph refers to the " volume or earnings of the export business." If " volume " refers to physical quantities of exports, the inclusion of the word is regrettable: whether the objective is a healthier balance of payments or a larger contribution by exports to this balance, an enlargement of the volume of exports *per se* is irrelevant.

The fourth and final criticism relates to the standard against which is to be measured the substantiality of the expected reduction in export earnings, since only substantial reductions are to qualify for the protection of paragraph (*f*).[20] The paragraph prescribes two alternative standards: the total export business of the United Kingdom; or the whole business, domestic and export, of the industry in question. It is clear that the first standard for comparison will rarely, if ever, be favourable to the industry, since few (if any)

[20] The judgment in *Re Water-Tube Boilermakers' Agreement* (at p. 344) clears up an ambiguity in the paragraph. It was held that substantiality refers to the *reduction* in exports and not to the extent of the export business.

industries, let alone particular products (or groups of products) covered by a restrictive agreement, would have annual sales in excess of total United Kingdom exports. Yet the second standard is not relevant if the improvement in the balance of payments or even the promotion of exports is the policy objective underlying the paragraph. This standard—the one likely to be operative in practice—was first introduced when the Restrictive Trade Practices Bill was in Committee, and it clearly brings smaller industries and their exports more readily within the sway of the paragraph. Mr. Thorneycroft, in charge of the Bill, defended this innovation as follows [21]: "The total export position of the country is made up of exports from often quite small industries, and it would be very damaging to the country if that particular argument were not admitted."

This explanation calls for two comments. First, the approach to business restrictions embodied in the legislation is that of the case-by-case method, each restriction being judged on its merits in the light of the specified criteria. But the explanation offered by Mr. Thorneycroft has recourse to an economy-wide consideration. Once this type of economy-wide consideration is admitted as being relevant, the basic approach of the legislation is called in question. For example, the case for the general prohibition of all domestic restrictive agreements gains considerably in strength when it is argued in terms of the advantages of the general loosening-up of the economy, which are likely to outweigh by far some possibly unfortunate changes in a few industries. Or it could be argued that a number of pockets of unemployment (none by itself being "severe and persistent") brought about by the abrogation of many restrictions would constitute a detrimental total situation which was better avoided. In any case, the explanation is likely to carry more conviction if it were shown that it is reasonable to suppose that the exports of a substantial number of the smaller industries are materially affected by restrictive agreements.

But even if the relevance of the explanation were accepted, the wording of the paragraph is questionable. For the standard by which substantiality is to be measured is an elastic one, being greater for industries with a larger production than for those with a smaller. Suppose industry A has a total annual production of £1 million with exports of £250,000, which are expected to decline to £50,000 if the restrictions should be removed. This would be a reduction of exports of £200,000, that is, 20 per cent. of the production of the industry. Suppose another industry B has a total annual production of £100 million with exports of £2 million which are expected to

[21] Parl.Deb. (H.C.) May 3, 1956, col. 693.

decline to £1½ million in the absence of the restrictions. This would represent a reduction of £500,000, that is a reduction of ½ per cent. measured against the total output of the industry. "Substantiality" in paragraph (*f*) means substantiality in relation to the total output of the industry. Thus it is possible that A's 20 per cent. reduction may qualify as being substantial by this test, whereas B's ½ per cent. reduction may properly fail to qualify. Yet, from the point of view of the balance of payments or of the national export trade, the reduction in B's exports would be two-and-a-half times as significant as that of A's exports. For the paragraph to make good sense in economics (subject to the earlier comments), the estimated *absolute* reduction in exports should be the relevant quantum, with an arbitrary but fixed bench-mark to separate the substantial from the insubstantial amounts. [The same answers could be given if all the reductions had to be related to the same basis or standard, such as the first one (total United Kingdom exports) stipulated in paragraph (*f*).]

Several types of restriction may conceivably increase export earnings: they can be divided into two groups. The first group are those restrictions affecting exports which, in their organisation and implementation, can be independent of restrictions operating directly in the home market. If such restrictions are included in an agreement which includes restrictions affecting domestic supplies, they are registrable and subject to adjudication by the Restrictive Practices Court. It seems clear, however, that the justification of those restrictions affecting exports in terms of paragraph (*f*) need not be carried over in favour of the other (domestic) restrictions, related to the export restrictions solely by virtue of the common agreement.[22] Examples of this group of export restrictions would be arrangements to raise the prices of exported goods where this raises export proceeds. This could occur, for example, where United Kingdom exporters enjoy a preferential position in a foreign market; or where price reductions by United Kingdom exporters would be matched by other exporters, without an off-setting extension of foreign demand; or where combination enables United Kingdom exporters to secure better terms on their sales to countries with import monopolies. This latter situation would be the foreign-trade

[22] This assumes that an *agreement* can be separated into its domestic and foreign constituent *restrictions*. The Court has jurisdiction to declare whether or not any restrictions in registered agreements are contrary to the public interest (s. 20 (1)); and s. 21 (1) refers to the adjudication of individual restrictions. Orders may be made by the Court to restrain parties from giving effect to an agreement in respect of those restrictions found contrary to the public interest. Such an agreement is in any event void in respect of those restrictions (s. 20 (3)).

counterpart of the situation envisaged in paragraph (*d*) of section 21 (1); and it was because of this consideration, *inter alia*, that the Webb-Pommerene Act of 1918 placed certain export agreements beyond the reach of the United States anti-trust legislation.

The second group are those restrictions affecting exports which are inextricably linked up with restrictions operating directly in the home market. Here, if the Court is satisfied that paragraph (*f*) is satisfied, the fate of the agreement as a whole would depend in part on the extent of detriments to home consumers or users brought about by the inter-related restrictions in the home market; and it is conceivable that the interests of these consumers or users may be sacrificed in favour of an increase in export earnings. An example of this type of restriction is an agreement which raises prices in the home market, but sets export prices below the level at which they would otherwise settle. Thus additional profits from the home trade are used, wholly or in part, to subsidise exports, thereby increasing the volume of exports and also possibly (but not necessarily) their value.[23] The desirability of this type of price discrimination in favour of foreign buyers need not be considered further here, except to draw attention to the possibility that such arrangements may make it difficult for other United Kingdom exporters to expand their exports in the face of subsidised foreign competition. It is worth noting that such arrangements are subject to the difficulty, for their practitioners, that those firms which make the sacrifice by selling cheaply abroad (at lower prices than they would otherwise be willing to accept) need not necessarily secure an appropriately-adjusted share of the more lucrative home market; the restrictions themselves do not provide for this compensation unless the price restrictions are allied with the regulation of export quotas or with market-sharing arrangements. A single-firm monopolist has no difficulty in implementing such price discrimination—though it will not be preferable for such a firm to "subsidise" exports merely because it has a monopoly at home. But the more firms there are in an industry, the less effective and durable the arrangements are likely to be.

[23] Lower prices than those obtaining in the absence of restrictions suggest that sales are being made below cost. A cartel would be willing to do this only when it is unable to control the output of its members. (A single firm can, of course, control its output.) For this reason, the claim that export prices are lower than they would be otherwise, because of the restriction, would call for careful examination. (It is conceivable that an increase in an industry's total output—brought about by an increase in exports—might make it possible for the industry to introduce new methods of production with lower (marginal) costs of production. But the necessary conditions for this phenomenon are unlikely to obtain in an industry composed of a number of separate firms. They *may* be found in single-firm industries.)

Another example of the second group of restrictions is a market-sharing agreement in the home market linked with market-sharing agreements in foreign markets. An organised concession in the home market to a leading foreign competitor might be the price to be paid for the advantageous participation of United Kingdom firms in foreign market-sharing schemes. Again, however, the more numerous the firms in the industry, the less likely it would be for such arrangements to be negotiated and enforced. The Monopolies Commission found a similar arrangement in the match industry where, however, the United Kingdom supplies were virtually in the hands of a single-firm monopolist. The majority of the Commission did not recommend the abolition of the domestic market-sharing arrangements because it thought that this would bring in its train the dissolution of similar arrangements in foreign markets to the detriment of United Kingdom exports. It is interesting that this was one of the few issues on which the Government did not follow the Commission but, instead, negotiated the termination of the arrangements in the home market without upsetting arrangements elsewhere.[24]

VI

This review of section 21 (1) of the Restrictive Practices Act has disclosed a number of points on which the contents of the section can be criticised. Some of the criticisms might be met by simple revisions or deletions. The criticisms of paragraph (*e*) [unemployment] and to some extent of (*f*) [exports] are different, and cannot be dealt with so easily, for they concern the essence of the legislative innovation of 1956, which involved a branch of the judiciary in questions of economic policy-making in fields in which the legislature and branches of the executive are or may be active. But it would be unnecessarily ambitious to propose, however tentatively, possible lines of reform so early in the life of the legislation. The article therefore concludes without conclusions.

Extract from section 21 (1) of the Restrictive Trade Practices Act, 1956

(*a*) that the restriction is reasonably necessary, having regard to the character of the goods to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation or use of those goods;

(*b*) that the removal of the restriction would deny to the public as purchasers, consumers or users of any goods other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom;

[24] Monopolies Commission, *Report on the Supply and Export of Matches and the Supply of Match-Making Machinery*, 1953, para. 220; Parl.Deb. (H.C.), April 5, 1954, Written Answers, cols. 9–10.

(*c*) that the restriction is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the persons party thereto are engaged;

(*d*) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from, any one person not party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such person, controls a preponderant part of the market for such goods;

(*e*) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade or industry to which the agreement relates is situated;

(*f*) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of the United Kingdom or in relation to the whole business (including export business) of the said trade or industry.

THE ENGLISH PROSECUTION

CHRISTOPHER WILLIAMS

IT can have surprised nobody when Patrick Devlin was recently appointed a Lord Justice of Appeal. His penetrating comments in legal matters, and lately even in a major social problem, have been for many matters for admiration, and for all matters for respect.

When, some four years ago, he accepted the invitation of the Yale University Law School to deliver the Sherrill lectures, he chose as his subject one that has recently been energetically, if sometimes rather emotionally, disputed in this country—the process preceding a criminal trial. This process is one of the functions acquired by the police over the past 130 years. The manner in which they discharge that function may well be a matter which will be engaging the attention of the Royal Commission on the police. What, then, could be more topical than the publication, for the first time in this country, of the text of his lectures, under the title *The Criminal Prosecution in England*? [1]

Sir Patrick Devlin intentionally refrains both from praising and from blaming the police. He attempts objectively to assess a part now played by them, which formerly has been played by other institutions. But, interesting though the views of such an authority must be to any who regard the proper functioning and control of the police as a vital element in a modern democracy, this is no examination of police methods as such. Rather is it a short but acute discussion on some aspects of the process by which the case against the accused is prepared in England. As the author shows, it is merely accidental that this task has fallen to the police. In other systems, the police play a relatively minor role. In France, for instance, although the preliminary work of assessing the evidence immediately available after a crime has been committed, and of instituting inquiries leading to the arrest of an accused person, is within the province of the police, the preparation of the case from then on is the responsibility of a magistrate-like official, the *juge d'instruction.* He it is who examines the witnesses and the accused, and who directs the further inquiries that may be necessary. Or, to take another example, in the United States of America, it is the District Attorney, usually politically elected or

* The author is a Barrister-at-Law and Chief Constable of Huntingdonshire and the Isle of Ely.

[1] Oxford University Press (1960), 118 pp., 15s.

appointed, who undertakes the responsible direction of the inquiries once the police have discharged their primary function. Indeed, the District Attorney comes earlier into the picture than does the *juge d'instruction*, for frequently he appears to exercise quite a remarkable degree of authority from the very beginning over the police officers engaged on a case.

Before he examines the manner in which the police operate up to the trial itself, Sir Patrick offers an interesting and significant explanation of the manner in which the police have acquired their peculiar responsibility. It is a story of an institution being created to discharge an administrative function, controls being introduced to regularise the discharge of the function, the controls ultimately paralysing, so to speak, the institution, with the result that a new institution has to be created to discharge the function, leaving the former institution either to die away or to work out a new function for itself.

Throughout the continuous process of development to which English criminal law has been subjected since the twelfth century, there have in fact been four separate institutions whose business it has been to obtain proof of the commission of a crime and to institute the prosecution that follows. They are the judge and the grand jury, the coroner and his jury, the justice of the peace, and the police. Only one of these, the coroner and his jury, has continued its ancient function to the present day, albeit in a modified manner. Concerned as it has been with only a small part of the criminal field, the main stream of development has drifted wide of it. It is the other three with which Sir Patrick concerns himself.

The judge, originally an administrative officer of the Crown, relied upon a jury of local people to tell him the facts, which they did from their own knowledge. The first step towards the present system came when the judges began to abandon their administrative functions, and to make themselves responsive to the controls exercised upon them by the growing body of law, which they themselves were helping to make. In a word, they began to act judicially. By the time the judges had completed their transformation from administrative to judicial officers of the Crown, it was the turn of the juries to undergo a similar change. The grand jury of people acting on local knowledge of the crime and its circumstances was replaced by a jury with no knowledge of the crime, acting upon evidence placed before them by witnesses who did have such knowledge. All that was left for the grand jury to do was to decide judicially whether an accusation presented to it from the petty jury merited trial.

The judge thus lost his original function of inquiring about the commission of a crime from local people. Consequently, it had become someone else's business to make the inquiry and lay the results before

the grand jury. The task fell in time to the justices of the peace, who, though from the beginning called conservators of the peace, were mainly administrative in their functions. Aided by that rudimentary form of police officer, the unpaid parish constable, it was for the justice of the peace to take account of the facts available, to examine witnesses as to their knowledge, and generally to get the case up for presentation to the grand jury, for their decision as to whether or not a trial was justified. Their inquiries were at first quite informal, but gradually they became subject to procedural rules. The transformation from an administrative to a judicial function was overtaking them, much as it had overtaken the judge and jury before them. By the beginning of the nineteenth century the justices of the peace, at any rate in London, had become deeply engaged in the investigation of crimes, and to help them they employed investigating officers, whom they swore in as constables. Putting it another way, the justices of the peace had become so judicially transformed that they were ready to hand over the administrative function of preparing the prosecution to someone else.

It was at this point that a new institution made its appearance, the professional police force. This was an administrative body, concerned with the prevention of disorder and crime, and the arrest of known offenders. To begin with they were scarcely regarded as forming part of the process of criminal prosecution. The justices of the peace retained their own paid staff of investigators, and the police officers exercised their powers largely at their own risk. They presented their cases to the magistrates as citizens, rather than as members of the force, and they were required to provide for their own legal advice and representation, if they thought it necessary. But a body so appropriate as the police force could not long be expected to avoid being drawn fully into the process of prosecution. Within twenty years of their institution, they had evolved their own machinery of investigation and prosecution, which dealt with increasing effectiveness with all stages of the process, from the collection of facts, through the interrogation of witnesses and suspects, to the identification of the criminal and the preparation of the case against him.

Relieved in this way of their task of investigating the crime and collecting the material for the prosecution, the justices of the peace moved up one square, so to speak, and assumed the responsibility, formerly belonging to the grand jury, of deciding whether the case put before them by the police justified a trial. Though this function is discharged almost entirely judicially, Sir Patrick indicates one or two curious vestiges of the administrative origin of the function. The

grand jury, for its part, deprived now of its only function, withered away, and is now no more.

Thus a function which was originally discharged by the judge and the jury, and then by the justices of the peace, passed to the newest of the four institutions considered by Sir Patrick. And, as had been the case at the start of each of the earlier stages, the function was an administrative one, discharged without restrictions of a judicial nature. Now that the function has been in the hands of the police for over a century, Sir Patrick has felt it important to examine the manner in which they have discharged their virtually self-imposed task, and especially the extent to which it has been found necessary to impose upon them judicial or other restraint. The discharge of this administrative function by the earlier institutions gradually suffered a crystallising process, by the imposition of judicial restrictions and rules. Is the pre-trial process, as carried out by the police, undergoing a similar formalisation, from the same cause? And if it is not, then ought it to be? This is the purport of the book, and any student of the modern social scene should find his answers extraordinarily interesting especially in the light—if such it be—of recent criticisms of police procedure.

For the purposes of his examination, Sir Patrick divides the police activity into two parts, the first being devoted to ascertaining the guilty man, the second to proving the case against him. In determining the guilty man, the police are totally unhampered by any form of judicial restraint. They ask questions of whom they choose, though they have no right to insist upon answers. From having a completely open mind as to who may have committed the crime, they may move forward unhindered through the stage of accumulating suspicion, to the moment when they decide to accuse a person whom, up to that moment, they have merely suspected. This is the point, when the suspect becomes the accused, at which the second part of the activity starts, and it is the point at which restraints begin to make themselves felt.

The first of these restraints is to be found in the Judges' Rules. Anyone has the right to say as much or as little as he chooses in answer to questions put by the police. This right is, of course, shared by an accused man, but what he says may only be admitted as evidence if it is proved to be said voluntarily. By requiring a police officer to caution an accused person that he need not say anything, but that whatever he says may be given in evidence, the Judges' Rules provide an assurance that only voluntary, and therefore admissible, statements are made. But the interesting thing about the Rules is that, so far from being imposed upon the police by the legislature or the judicature, they were formulated either by the police themselves or by the

judges in response to a request by the police. Sir Patrick thus illustrates the view that the police are not a body upon whom standards of fairness have to be imposed against their will; rather it is only because of a general sense among police officers that the accused ought to be fairly treated, that the English system works at all.

Then there is a further source of restraint, about whose effectiveness no one familiar with the English criminal trial can doubt. That source is the judge himself. As Sir Patrick points out, this form of restraint makes itself felt in three ways. First, the judge has an inherent power to disallow evidence which, though technically unobjectionable, is nevertheless of such a nature, or has been obtained by such means, as to render its admission unfair. This power is a very lively one, and there are recent cases in which it has been decisively used. Secondly, there is the habit of judges to express their opinion of any aspect of police work. This sort of judicial disapproval is, of course, far more effective than any statutory restraint could ever be. Thirdly, there is the very effective channel of communication of ideas downwards from the judge, through counsel, to the police. The total practising membership of the Bar is about 2,000. From this body all the judges are chosen. A far smaller number practise in the criminal courts, and these are known personally to the judges, who meet them formally and informally on circuit. Frequent consultations take place between counsel and the police. Individual barristers are engaged indifferently on behalf of the prosecution and the defence; they are not confined to just one side or the other. These factors, Sir Patrick suggests, tend to make the acceptance of high standards, and the rejection of devious methods, relatively easy for the police.

One other aspect of the process of prosecution mentioned by Sir Patrick is worth comment here, if only because it illustrates the strangely haphazard manner in which the process has developed. Unlike the questioning of suspects and prisoners, about which the police themselves felt sufficient anxiety and responsibility to cause them to seek guidance from the judges, and unlike the power of arrest, which has always been important enough to merit the attention of the common law and statute law alike, the power of search remains relatively ill defined. Perhaps it is, as the author suggests, because the police realise that they are expected to act reasonably, and so long as they do so the law will hold aloof; it will be time enough for the law to step in when the police start acting unreasonably.

It is apparent that the police have a very difficult task, in regulating their prosecution activities with little specific control and guidance from the law. The public demands a very high standard from the police. Those who have felt anxiety about how the police today discharge their duties may well be reassured by Sir Patrick's conclusion

that they discharge their very difficult task well enough. Police officers, on the other hand, would do well to note the effect on the mind of so eminent a judge, of such points as a blind and persistent denial by a policeman that he has deviated one hair's breadth from the strict text of the Judges' Rules, or that he has discussed his evidence with a fellow police officer.

But though it is clear that things could be a great deal worse, that does not mean that there is no room for improvement. Still less does it mean that change is unlikely. For it is implicit in Sir Patrick's argument that change may come as a consequence of the continuous process of development he has noted, whether it is desirable or not. In other words, it may be that, despite a generally satisfactory position now, the balance is not stable. A stable position has never been achieved in the past. Always there has been the free action, the restraint, the paralysis, and the transfer of the duty to a freer agency. What happens if increasingly, as a result either of sustained demand for greater control of the police, or of a deterioration in the conduct or the morale of the police themselves, the police are required to act more and more judicially, under closer and closer restraint by higher authority? Does Sir Patrick's theory demand that there is some agency, yet to be devised, that will find itself charged with the duty that the police may find themselves too formalised and controlled to discharge effectively? It is difficult to imagine such an agency, though it may be that private detectives appear to foreshadow such a development in the United States of America, where in some cases the police are more severely restricted than the police in this country.

In default of such another body it may be that the responsibility, having descended the scale, from the judges, through the justices of the peace, to the police, may begin to move upwards again. Perhaps the controls and restraints may take the form of an official charged with the duty of controlling the prosecution activities of the police. Already we have such an official, the Director of Public Prosecutions, to deal with certain of the more serious crimes. An enlargement of his responsibilities so as to cover the whole field of crime might be a possible development, though an expensive one. On the other hand, the French *juge d'instruction* might provide a model, though it would involve many departures from the English system. Either of these types of official would certainly tend to provide a more uniform restraint on the excessive zeal on the part of investigating officers.

If, however, an official of the central government were thought to be too dangerous a solution, perhaps a locally appointed public prosecutor, on the lines of the District Attorney, might be thought to solve the problem. The trouble here might arise from the fact that the police officer's duty is to the Crown, while the local prosecutor's duty

would be to the authority which appointed him. A recent example shows clearly the grave dangers arising when the duty of the police to the Crown comes into direct conflict with the duty of a local legal official to the council controlling him. And this sort of danger is bound to increase if national politics are to play an increasingly important part in local government.

But even if an official were to be created for this purpose, it is far from certain that the proposed remedy would do anything but aggravate the complaint. One consequence of placing the control of the investigation in the hands of a judicial body such as the *juges d'instruction* has been, as Sir Patrick points out, to induce the police to resort to even more dangerous and chancy methods than they would be likely to use if they had control of the process themselves. He need not have confined his observations to France. Anyone with knowledge of the manner in which some city police forces in the United States of America operate under the control of District Attorneys will be aware of the degree to which police officers can persuade themselves that the end justifies the means.

By tradition, training and experience, the police in this country have built up a system, very much their own, which has worked well for over a hundred years. In doing so, they have acted in response to a high sense of responsibility, and under effective, if unwritten, control from the judges. To remove this responsibility from them might well prove disastrous. As Sir Patrick puts it, the effectiveness of the unwritten rules by which the police guide themselves depends, among other things, upon the expectation by the public that the police will act fairly, coupled with a general desire among the police as a whole to satisfy this expectation. The police feel that they are responsible, not only to the courts, but also to the general public for their activities. Responsibility of this kind is undoubtedly a most powerful influence in the development of corporate character and outlook. If the police are in the end required to act solely on the rigid instructions of an executive officer, their sense of responsibility is bound to disappear. And, to quote Sir Patrick once more, the worst thing of all is an irresponsible police force.

"LA COMMUNAUTÉ"

P. F. GONIDEC

IT is often said that British colonial policy is completely different from that of France. Perhaps this unqualified assertion is not entirely true.

First, the French taste for written law is opposed to "British diffidence about formulating principles to guide political conduct." [1] In fact, every member of the Commonwealth and the British Empire, unlike the United Kingdom, has a written and sometimes detailed constitution. Of course this is not the whole story: it is necessary to take account of the constitutional conventions. But that is probably true for every country, even France. On the other hand, Great Britain has not on occasion disdained making formal agreements to define her relations with members of the Commonwealth. The most striking example is the unfortunate Irish treaty of 1921.

Secondly, it is said that French colonial policy is one of assimilation, meaning that France tries to give the overseas countries institutions "identical with those of any part of France itself." [2] But speaking of the British Empire, Professor Brady writes that "the express imperial policy after the American revolution . . . was to *assimilate* the representative colonial legislatures to that of Westminster. . . . Responsible government, achieved during the forties in Canada and in the fifties in Australia, was merely a further step in the march of such *assimilation*." [3]

Thirdly, French centralisation is opposed to British decentralisation. But a federation between Britain and the Dominions had its protagonists once and the failure of their efforts perhaps owed more to the reluctance of the Dominions to give up their autonomy than to the unwillingness of British policy to contemplate such a possibility. Moreover the policy of self-government for Asia and tropical Africa is a relatively recent one. Only during the First World War was India promised self-government and only after the Second were the Gold Coast and Nigeria given a representative system of government, a step

* The author is Professeur à la Faculté de Droit et des Sciences économiques de Rennes. This article is based on a paper given to an evening meeting at the Institute of Commonwealth Studies in the University of London, on November 2, 1959.

1 A. Brady, *Democracy in the Dominions* (2nd ed., Toronto, 1952), p. 69.

2 K. Robinson, *The Public Law of Overseas France since the War* (Oxford Institute of Commonwealth Studies, 1954).

3 Brady, *op. cit.*, p. 5.

towards semi-responsible government which was obtained only in 1954 in the Gold Coast. Considering French colonial policy in recent years, it is easy to see that in most cases political centralisation is no longer a possibility. The former protected states of Indochina and North Africa have become independent states co-operating with France under the terms of treaties. Togoland and the Cameroons will be independent next year and at present enjoy full internal autonomy, maintaining at the same time co-operation with France through agreements. Lastly, those overseas countries which are member states of the Community have been conceded internal autonomy or semi-responsible government. Even for Algeria, General de Gaulle has recently proclaimed her right to self-determination through free elections.

Where then is the difference between current French and British colonial policies? The main one is that the French Government, rightly or wrongly, believes that it is possible to unite in one political body France and the overseas countries, even if those countries enjoy full internal autonomy. In other words the idea of Greater France is not dead, but the French Government is trying to realise it according to a new formula, reconciling the necessary autonomy of overseas countries with the dream of a politically organised union between France and the overseas countries. The Community is an attempt—surely the last—to give effect to that idea.

In this article it is not proposed to attempt to trace the origins of the Community,[4] but only to examine three topics:

1. The position of member states in the Community.
2. The division of powers between the Community on the one hand, and its member states on the other.
3. The structure and institutions of the Community.

1. The Member States of the Community

The main feature of the Community is that, like the Commonwealth, it is a free association of peoples, *i.e.*, (i) in 1958 all the overseas territories—especially the African territories and Madagascar—were free to join the Community or to secede; (ii) at any time any member of the Community is free to secede.

When General de Gaulle decided in 1958 to create what he called a "federation" and what became finally the Community, he made it clear, notably in his speeches during his African tour in August 1958, that the overseas electors, acting through universal suffrage, would be

[4] G. Devernois, "Birth and development of the Franco-African Community," *Civilisations*, 1959, No. 2, pp. 208–216. *Cf.* P. F. Gonidec, *Les constitutions des Etats de la Communauté* (Paris, 1959), pp. 1–4.

entirely free to adopt or to reject the constitutional scheme proposed by the French Government. If they rejected it, it would mean that they were opting for independence. In Guinea, General de Gaulle declared: " France is offering this Community. Nobody is bound to adhere to it. Independence has been spoken of. I say here louder than elsewhere that independence is within the reach of Guinea. She may seize it on September 28 by rejecting the proposal which she is offered and, in that case, I guarantee the mother country will not oppose her. Of course she will give effect to the implications of that decision, but she will not obstruct it and your country will be able to start on its own road according to its own wishes." Similar declarations were made in the other territories. Speaking to agitators claiming independence in Dakar, he said: " If they want independence, let them take it on September 28. . . . We don't force anybody. We ask them to say ' Yes ' or ' No.' Should it be ' No,' we shall give effect to the implications of that decision."

In fact, only Guinea cast a negative vote and she became immediately independent. On September 29, the French Government made known the consequences of this negative vote: separation from the other West African territories, the end of French financial aid, withdrawal of French officials, etc. In spite of these decisions, there are not many examples of colonies becoming so quickly and so peacefully independent. All the other overseas territories approved the French Constitution with high majorities amounting almost to unanimity.

But these countries had still another choice to make. The territorial assemblies had to decide if the territory would retain the status defined by the *loi-cadre* of June 23, 1956,[5] or would become an overseas department, similar to metropolitan departments, or would adopt the new status of a member state of the Community.

Only the small territories decided to keep the status of overseas territories,[6] a status which can be amended by an Act of the French Parliament on the advice of the territorial assembly concerned. None of them wanted closer integration with France by assuming the status of overseas departments. The seven territories of West Africa,[7] the four territories of Equatorial Africa [8] and Madagascar opted for the status of a member state of the Community. At the same time, the territorial assemblies transformed themselves into legislative and constituent assemblies and the territorial executive councils into

5 K. Robinson, " Constitutional Reform in French Tropical Africa," *Political Studies*, 1958, No. 1, pp. 47–69.

6 Somaliland, the Comoro archipelago, St. Pierre-et-Miquelon, French Polynesia, New Caledonia.

7 Mauretania, Senegal, Dahomey, Ivory Coast, Upper Volta, Niger, and Sudan.

8 Chad, Congo, Gabon, Ubangui-Chari (now *République Centrale Africaine*).

national governments. Thereafter, under the terms of the French Constitution (Article 79), the overseas territories enjoyed full internal autonomy (Article 77).

It must be observed that the overseas territories could become member states either individually or grouped in unitary or federal states. In fact, all of them joined the Community as individual states. Afterwards, some of the West African states tried to federate. The outcome was the Mali federation. But only Senegal and Sudan became members of that new federation. Despite the existence of this federal state, Sudan and Senegal are separately represented in the organs of the Community. Others of the African states have concluded agreements providing for co-operation between themselves in particular fields, but they retain their separate identity.

To sum up, the Community is composed of thirteen states, including France. France means the metropolitan territory, the overseas departments [9] and the small overseas territories which decided to retain that status. It must be emphasised that the overseas departments, notably Algeria, were not authorised to become member states of the Community, or, *a fortiori*, independent states. They could only remain integral parts of France in 1958. But it is true to say that now every member state is free to remain in the Community or to get out of it, to secede.

Curiously enough, General de Gaulle had not originally been prepared to allow the member states to become independent once they had agreed to join the Community. *A fortiori* was this so in respect of the overseas departments and territories. The constitutional scheme prepared by the government did not provide any procedure for, nor did it contain any reference to, the right of independence or self-determination. But the leaders of the *African Convention*, headed by L. S. Senghor, a Senegalese deputy, made clear that this scheme was not acceptable to them unless the constitution recognised the right of independence.

Finally, that right has become a constitutional right. Overseas Republics may legally become independent in two ways:

First, the legislative assembly of a Republic may vote a resolution asking for independence (Article 86). This resolution must be confirmed by a referendum organised and controlled by the authorities of the Community. If the electors confirm the legislative assembly's decision, an agreement, approved by the French Parliament and the legislative assembly concerned, settles the transition from autonomy to independence.

[9] Martinique, Guadeloupe, Guiana, Réunion, and the Saharan and Algerian departments.

Secondly, a state may ask for a complete transfer of common affairs from the Community to itself (Article 78 *in fine*). My interpretation is that a complete transfer is tantamount to independence.[10] At present the Community is a political organisation set up in order to decide a common policy in some fields and to apply this policy. One may wonder what would be the usefulness of a state remaining in the Community after it has assumed complete control of affairs previously managed by the Community. It would, for example, be strange to see such a state discussing common affairs at the meetings of the executive council, although there would then be no common affairs so far as it was concerned. Here we see a great difference from the Commonwealth in which independence is a condition of membership, while in the Community complete independence or full sovereignty would compel a state to leave the organisation. But this difference can be easily explained. In the Commonwealth there is no common policy, no common organ invested with a power of decision as in the Community. It may be that the latter will evolve and become a kind of Commonwealth. But at present its members have to accept a common policy at least in one of the fields mentioned by the constitution. Whenever a member state asks for a *complete* transfer of power, it excludes itself from the Community. Such a state may of course conclude with the Community (or with France) an agreement of association (Article 88). But then it would be out of the Community and not inside, " with it but not in it." [11]

As to the overseas departments and territories, it was doubtful in 1958 if they could secede from the French Republic or the Community or even obtain a new status within either of them. Unlike the Constitution of 1946, that of 1958 does not provide for a change of status. One might conclude from this omission that the status of the overseas departments and territories is crystallised. But the preamble of the French Constitution states in general terms the right of self-determination for all the overseas peoples, and from this it may be inferred that any country has a right to change its present status. That interpretation has found an application in the case of Algeria. On September 16, 1959, General de Gaulle gave a solemn undertaking that the Algerian people would be afforded an opportunity of expressing its opinion. Once peace has been restored, the Algerian people

[10] A different view is taken by the anonymous author of " Les Pays d'outre-mer de la République Française, La Communauté, et les Accords d'Association," *Revue juridique et politique d'outre-mer*, 1959, No. 3, pp. 355–357.

[11] What was agreed in respect of Mali at the 6th meeting of the Executive Council of the Community in December 1959, does not, in the writer's opinion, necessarily invalidate this proposition since it is intended that simultaneously with the conclusion of agreements fully transferring responsibility for common affairs to Mali, other agreements will be made between Mali and the Community which will again confer on the Community some responsibilities in the sphere of common affairs.

will be asked if it wishes to be independent or to maintain some kind of association with France. Should it choose the second solution, there would be two possibilities—complete integration with France, creating a greater France from Dunkirk to Tamanrasset, or, in General de Gaulle's own words: " The government of the Algerians by the Algerians, assisted by France and in close union with her for economy, education, defence, external affairs." [12] This formula is nothing else than the formula of the Community as it appears from the distribution of powers between the Community and the member states.

2. The Division of Powers Between the Community and the Member States

It is not possible to analyse one by one the subjects placed by the French Constitution in the field of the Community. It would take too much space. We will try only to see what are the main characteristics of the Constitution. Here, it must be remembered that at the origins of the Community there is a federal idea, which had no success in 1945–46 [13] but revived from 1953–58. Gratifying the wishes of L. S. Senghor and Sekou Touré as expressed by their respective parties in July 1958, General de Gaulle himself declared on July 14 that he intended to rebuild French institutions according to " a federal mode." Consequently the problem was the classical one—What would be the division of powers between the federation and the federated states? According to whether the fathers of the federation want a strong central power or a loose one, the answer is quite different. Both the evolution of old federal states and more recent federal experiments suggest that the general tendency is to give the central government strong powers. In relation to the Community, this tendency was strengthened by the fact that France was a unitary state. Hence it was to be expected that the organisation would be given strong powers. In fact, however, there are in the Constitution some conflicting ideas.

(i) A fundamental principle is that of state autonomy, *i.e.*, all the powers which have not been expressly conferred upon the central authorities belong to the states' authorities. This principle is a very liberal one: several consequences follow from it.

First, the French Constitution left the overseas Republics entirely free to devise their own constitution.[14] That is quite different from the procedure generally followed in similar circumstances in the British Empire, in which even when countries like Canada or Ghana

[12] *Cf. La Semaine en Algérie*, No. 51, 1959.

[13] *Cf.* P. F. Gonidec, *Droit d'outre-mer*, Vol. I: " l'Empire colonial de la France à la Communauté " (Paris, 1959), pp. 345–359.

[14] *Cf.* P. F. Gonidec, *Les constitutions des Etats de La Communauté.*

attained full sovereignty, constitutions were enacted for them under the forms of an Act of Parliament or an Order in Council of the United Kingdom. In the case of the overseas Republics, their constitutions have been adopted by constituent assemblies and sometimes approved by the electors.

Secondly, the legislative and executive powers are settled according to the wishes of the people as expressed in the constitution of each Republic. In fact, it is very interesting to observe that all the overseas Republics have adopted a political system similar to the French one—*i.e.*, a strong executive and a parliament with limited powers. The main differences are a unicameral legislature, except in Madagascar, and the exercise of executive power by one person only, combining the functions of a head of state and of a prime minister. No control is exercised by the Community over the acts of these political organs. There are no such things as a power of assent or of disallowance exercised by a representative of the Community.

As to the judicial power, the principle is that each Republic has entire freedom to create courts and define their composition, organisation, and powers. But here, the Community has a power of supervision (Article 78). The expression " contrôle de la justice " has been interpreted as giving the Community the right of examining whether the judgments of the overseas territories are consistent with the law in force in each state, *i.e.*, the law of that state and the law of the Community.

A third consequence of the principle of autonomy is that the powers of the Community must be interpreted restrictively. This may be of importance from a legal point of view, though experience in the United States or Australia, for example, suggests that the problem is likely to be more a political than a legal one. Even judges are influenced by political, economic, and social conditions.

(ii) If the principle of autonomy is cardinal, its importance is balanced by the large powers assigned to the Community. The list of common affairs is extensive and owing to the vagueness of the constitution, its terms have been extensively interpreted despite the fact that the residuary power is assigned to the states.

The list of common affairs is contained in section 78 of the French Constitution. They can be classified as follows:

foreign policy and defence;

economic and financial common policy, together with some specified economic and financial subjects: currency, general organisation of external and common transport and of telecommunications, policy relating to strategic materials;

higher education;
control of justice.

This list covers a large field. Especially, the expression "economic and financial common policy" has been interpreted as being an equivalent of "franc area." Economically, it means that the Community is a free trade area. Duties, discriminations, prohibitions, quantitative restrictions are not allowed in the commercial relations between the member states. But there is no common tariff: each parliament is free to fix duties on foreign goods. As to the commercial relations of the member states with foreign countries, the Community has the power to decide on import and export programmes. In addition, since the overseas Republics have no treaty-making powers, they have to apply international conventions concluded by France on behalf of the Community. Financially, there is only one common legal currency, *i.e.*, the franc. The rate of exchange between the franc and the legal currencies in use in the overseas Republics is a fixed one, prescribed by the President of the Community in executive council. An interesting consequence of the unity of legal currency is the free convertibility of bank notes and coins and the free circulation of capital within the Community. In relations with foreign countries, there is common legislation regarding exchange control and there is also a common pool of foreign currencies. In each state, officials entrusted with the application of this common legislation derive their powers from the Community and control financial relations with foreign countries.

From this it follows that the Community is entrusted with all those aspects of financial and economic affairs which are common to all the member states or which concern their relations with foreign countries. Each state is, however, responsible for purely internal affairs. For example, it decides its own programme of economic development. But here it may enjoy the technical and financial assistance of France. A French Ministry in charge of assistance and co-operation with the overseas Republics has been created for this purpose—its functions do not concern the Community but only the relations between France and the overseas Republics. Recently, the overseas Republics have complained about this unilateral assistance and have asked for the creation of a common fund of financial and economic assistance.[15]

(iii) The powers of the Community are very large, but some compensation is provided by the flexibility of the rules regarding the distribution of powers. An essential feature of the system created in

[15] The communiqué issued after the meeting of the executive council on December 11–12, 1959, made it clear that this matter had been discussed, and continued—"Il en résulte que certaines opérations déterminées seront arrêtées au sein d'un organisme groupant les représentants de tous les Etats."

1958 is that the list of common subjects is not immutable. At any time, each state may either transfer to the Community a subject which is in its own field, or ask for the transfer of a common subject from the Community to itself. Such transfers are brought about by special agreements approved by the French Parliament and the state legislature concerned. Thus one state might be content that university education should remain one of the common affairs vested in the Community while another one preferred to take over this responsibility itself.

Of course, the possibility of such transfers is a threat to the unity of the Community, but it is the only means of providing some defence against criticism from the overseas Republics to the effect that the powers of the Community are too large and of allowing the organisation to evolve peacefully towards greater decentralisation. The complete transfer of powers asked for by Sudan and Senegal is proof that such peaceful change is possible and that the Constitution is not a dead letter.

The same flexibility, which contrasts with the previous rigidity of the French colonial system, may also be seen in the structure of the Community.

3. The Structure of the Community

Only the main characteristics of the structure conceived in 1958 will be discussed.

(i) First, it could be argued that the Community is a federal state since it has the classical trilogy:

executive organs: the President and the executive council;
a deliberative organ: the Senate;
a judicial organ: the Court of Arbitration.

But its federalism is not real. On the contrary, a first characteristic of the structure of the Community is some confusion between the organs of the Community and those of the French Republic.

Thus the President is the President of the French Republic, just as the Queen is the head of the Commonwealth. The difference is that General de Gaulle is not a monarch, even if some journalists like to compare him with Louis XIV or Henry IV. Another difference is that the President of the Community is never the head of state in the overseas Republics. The latter have their own heads of state. The President is only represented in each Republic by a High Commissioner who never intervenes in the internal affairs of the overseas Republics and, unlike the Governor-General in the kingdoms of the Commonwealth, has no legal power to perform any function on their behalf.

Secondly, unlike a federal state, the Community does not have Ministers of its own. It might have been so, but, in fact, one of the first Presidential decisions [16] was to nominate as Ministers of the Community the appropriate French Ministers, seven in all, in order to administer common affairs. Like the President, the French Ministers perform two sorts of functions: a purely French one, and one on behalf of the Community.

(ii) Secondly, a federal principle appears in the participation of all the member states in the organs of the Community.

The President of the Community is elected by an electoral college, the composition of which has been fixed by the French Constitution. Section 6 reads: "The participation of the member states of the Community in the electoral college of the President of the Republic is fixed by agreement between the Republic and the member states of the Community." Owing to the population of France,[17] her influence is, of course, greater than that of any overseas Republic or even of all of them. Nevertheless, it is interesting to note that the President of the French Republic, being at the same time the President of the Community, is elected by all the member countries.

The executive council is also a body composed of representatives of all the member states. It is presided over by the President of the Community. Its members are the Prime Ministers of all the member states, *i.e.*, thirteen in all. Superficially the executive council seems not unlike the conference of Prime Ministers in the Commonwealth. But, in addition to these members, it includes the seven French Ministers entrusted with the administration of common affairs, something quite without parallel in the Commonwealth in its present state. Lastly, the President may call other Ministers to sit in the executive council for the discussion of special subjects. In fact, up to now, these have always been French Ministers.

As to the Senate, it is composed of 284 delegates elected by the different parliaments. Each state is represented on the basis of its population, *i.e.*, one senator for 300,000 inhabitants, with a minimum of three seats per state. France (including its overseas countries) is thus represented by 186 senators out of 284. We see here an important consequence of the fact that France is a big state compared with the scattered overseas Republics—one thinks of the place of Russia in the U.S.S.R.

Lastly, the Court of Arbitration is composed of seven members appointed for six years by the President of the Community. They must be legally qualified persons (judges, barristers, professors of law,

[16] Decision of January 31, 1959. *Journal Officiel de la Communauté*, 15 février 1959, p. 8.

[17] Nearly 55 millions against 27 for the Overseas Republics.

etc.). Nothing prevents the President from nominating judges from the different states: in fact, the first nominations (March 7, 1959) included three judges from the overseas Republics.

(iii) A more difficult problem is to decide where in fact power in the Community rests.

We may first set aside the Court of Arbitration. From the French Constitution and the Ordinance of December 19, 1958, it is plain that the court is not similar to the supreme court of a federal state. Its essential function is to settle legal disputes between member states, a thing which is not afforded by the institutions of the Commonwealth, a thing which could have been useful in the Kashmir dispute, for example. In some features, the Court of Arbitration is similar to an international tribunal. Thus it can never settle disputes between individuals or between a state and individuals. Only states have a right to use the court. Besides, the rule of local redress is applied by the court. To sum up, the role of the court is essentially to compel the states to apply the law of the Community. It must also be mentioned that the Court of Arbitration may be asked for advice on legal questions by the President of the Community.

As to the Senate, it cannot be considered as a parliament of the Community. It has only limited legislative powers: those parts of the French Constitution and any organic acts which relate to the Community may be revised by acts voted in the same terms by the Parliament of the French Republic and the Senate.[18] In fact, owing to the large majority of French representatives in the Senate, the constituent power belongs essentially to France. Secondly, the legislative assemblies of the member states may delegate their legislative power to the Senate. But then the latter legislates not in the common field but in the national fields.[19] Otherwise, the Senate only has power to discuss common economic and financial policy, to examine treaties and agreements applying to the Community, to be consulted on the declaration of war, and generally on any common affair. In each case, the item must be put on the agenda by the President of the Community.

Thus it seems the Senate is chiefly a consultative body. It is not in any way authorised to control the Ministers. It may only ask the Ministers for information by written questions and the answers are always written. There is no debate and it is not possible to vote a motion of censure.

What about the President, the executive council and the Ministers?

The executive council is "the supreme organ of co-operation between the member states in the governmental and administrative

[18] s. 85 of the French Constitution.
[19] s. 83 of the French Constitution (para 5).

fields." [20] But the President " formulates . . . the decisions necessary for the management of common affairs: he is responsible for their execution." [21] From a legal point of view, there is no doubt that the only authority invested with a power of decision at the top is the President. The problem is whether, in fact, he is bound to act only on the advice of the executive council, in other words whether he is a constitutional monarch or the head of a presidential system. It is very difficult to answer this question for the agenda and the debates of the executive council are top secret. But, from its communiqués, it seems that there is close co-operation between the President and the executive council. One may even go so far as to say that, in some cases, the executive council has a real power of decision.[22]

As for the Ministers, they have important but subordinate functions, since they prepare and apply the decisions of the President. They contribute also to the shaping of the common policies since they are members of the executive council. Here is a paradoxical situation. As French Ministers, including the Prime Minister, they are responsible only to the French Parliament. But as Ministers of the Community they seem to be responsible only to the President of the Community. How can these dual responsibilities be combined, a parliamentary system reconciled with a presidential system?

In conclusion, we ought no doubt to define the nature of the Community. It would be a nice—if unconstructive—discussion to consider whether the Community is a state and, if so, what kind of state, a federation or a unitary state, though politically decentralised. Instead of entering on this discussion, it is better to adopt the approach of British constitutional writers to the Commonwealth. Sir Ivor Jennings, for example, writes: " The British Commonwealth is not a state—it is a collection of nations associated for a few purposes." [23] All the same, the Imperial Conference of 1926 asserted:

> " It defies classification and bears no real resemblance to any other political organisation which now exists or has ever been tried."

Why should not these pragmatic definitions be applied to the Community? They have one essential merit: they avoid trying to define what is perhaps undefinable.

BIBLIOGRAPHY

F. Borella: " Le fédéralisme dans la constitution du 4 octobre 1958," *Annuaire Français de Droit International*, 1958, p. 659 *et seq.*

[20] s. 4—Ordinance of December 19, 1958. [21] *Ibid.* s. 5.

[22] *Cf.* F. Borella, " Le pouvoir gouvernemental dans la Communauté—Le Président et le Conseil exécutif," in *Recueil Penant*, 1959, Doctrine, pp. 552–563.

[23] *The British Commonwealth of Nations* (3rd ed., London, 1956), pp. 106–107.

F. Borella: "Le pouvoir gouvernemental dans la Communauté," *Recueil Penant*, 1959 (Doctrine), p. 551 *et seq.*

P. F. Gonidec: *Droit d'Outre-Mer*, 2 Vols. Vol. I: "De l'Empire colonial de la France à la Communauté" (Paris, 1959); Vol. II: "Les rapports actuels de la France et des pays d'outre-mer." Editions Montchrétien (in the Press).

—— "Introduction à l'étude de la Communauté," *Recueil Penant*, 1958, and reprint. Librairie Sirey, 1959.

—— *Constitution des Etats de la Communauté. Introduction et textes.* Librairie Sirey, 1959.

M. Merle: "La Constitution et les problèmes d'outre-mer." *Revue Française de science politique.* 1959, pp. 135–166.

Anon.: "Les pays d'outre-mer de la République Française, la Communauté, et les Accords d'Association," *Revue Juridique et Politique d'outre-mer*, 1959, Nos. 1 and 3.

CURRENT SURVEY

	Page
United Kingdom	190
Commonwealth and Dependent Territories ...	213

This digest, which has been compiled by the Editor and G. J. Borrie, Barrister-at-Law, covers the period from January 1, 1960, to March 31, 1960.

UNITED KINGDOM

Courts

Legal Aid and Advice

Advisory Committee. The report has been published of the advisory committee (Chairman: Viscount Bridgeman) reconsidering the financial provisions of the Legal Aid and Advice Act, 1949, and the Legal Aid (Assessment of Resources) Regulations, 1950 (Cmnd. 962).

Legal Aid and Advice, England. The Legal Aid and Advice Act, 1949 (Commencement No. 7) Order, 1960, has been made. By this Order, sections 21, 22 and 23 of the Legal Aid and Advice Act, 1949, came into operation on March 14, 1960 (S.I. 1960 No. 257).

The Legal Aid and Advice Act, 1949 (Commencement No. 8) Order, 1960, has been made. The effect of this Order is to bring into force on March 28, 1960, section 5 of the Legal Aid and Advice Act, 1949, which provides for legal aid in taking steps to assert or dispute a claim where the question of taking, defending or being a party to proceedings does not arise or has not yet arisen but, if it did arise, the proceedings would, or might properly, be such that legal aid could be given in connection therewith under section 1 of the Act (S.I. 1960 No. 407).

The Legal Aid (General) Regulations, 1960, consolidate, with amendments relating to procedure and administration, the Legal Aid (General) Regulations, 1950, the Legal Aid (General) (Amendment No. 1) Regulations, 1954, the Legal Aid (General) (Amendment No. 2) Regulations, 1955, the Legal Aid (General) (Amendment No. 3) Regulations, 1959, and the Legal Aid (General) (Amendment No. 4) Regulations, 1959.

The Regulations also make provision for legal aid in matters not involving litigation under section 5 of the Legal Aid and Advice Act, 1949. Regulations 2 to 13 include provisions relating to applications for legal aid under that section and matters resulting therefrom; Regulations 15 to 17 and Regulation 19 include provisions for the conduct of cases receiving assistance under that section and the recovery of money in those cases for the benefit of the Legal Aid Fund; the Schedule to the Regulations provides for the assessment of the resources of applicants for legal aid in matters not involving litigation and for the assessment of any contribution payable by those who are granted this form of legal aid. It will be available to those who have disposable capital not exceeding £75 and disposable income not exceeding £234.

Regulation 20 makes provision for the taxation of costs of legally aided proceedings, and the lodging of objections to and reviews of those taxations. Regulation 21 provides for the appointment by the Lord Chancellor of a solicitor to intervene in reviews of legally aided taxations and Regulation 22 provides for appeals from the decision of the judge on a review of taxation (S.I. 1960 No. 408).

Legal Aid and Advice, Scotland. The Legal Aid (Scotland) Act, 1949 (Commencement) (No. 4) Order, 1960, brought into operation on March 28, 1960, provisions enabling the introduction of a scheme for making legal aid available to persons of modest means in matters not involving litigation (S.I. 1960 No. 496).

The Legal Aid (Scotland) (Section 5) Regulations, 1960, make provision for legal aid in matters not involving litigation under section 5 of the Legal Aid (Scotland) Act, 1949. The Regulations include provisions relating to applications for legal aid under that section and matters arising therefrom, and for the recovery of money in such cases for the benefit of the Legal Aid (Scotland) Fund. The Schedule to the Regulations provides for the assessment of the resources of applicants and for the assessment of any contribution paid by persons who are granted legal aid under section 5 of the 1949 Act. Legal aid will be available to those who have disposable capital not exceeding £75 and disposable income not exceeding £234. (S.I. 1960 No. 497).

Reports. The ninth annual report of the Law Society on the operation and finances of Part I of the Legal Aid and Advice Act, 1949, has been published with the comments and recommendations of the Advisory Committee, by the Lord Chancellor's Department (H.M.S.O. 39–72–9).

Crown Proceedings

Privilege

Certain entries in the diaries of a detective in the fraud department of the C.I.D., the third defendant in an action in which all three defendants were charged, *inter alia,* with conspiracy, false imprisonment and malicious prosecution, had been sealed by order of the Home Secretary who claimed Crown privilege on the ground that their disclosure would be injurious to the public because they indicated or tended to identify sources of police information. The plaintiff made application for the unsealing of the entries and a subpoena was served on a member of the staff of the D.P.P. requiring him to produce other documents relevant to the action, namely, police reports, memoranda or notes of interviews, relevant entries in his official diaries.

Held, that the claim for Crown privilege in respect of the entries in the diaries was made in respect of each and every sealed entry, and the court had no power to go behind the certificate of the Home Secretary; that a claim for Crown privilege in respect of the police reports, upheld while the reports were in the detective's possession, still applied though they were now in the possession of the D.P.P.; that, in so far as the memoranda and notes of interviews and entries in official diaries were concerned, a claim for Crown privilege could be made in face of the court, and it was unnecessary for that claim to be supported by an affidavit by the Attorney-General: Auten v. Rayner (No. 2) [1960] 2 W.L.R. 562.

Education

Adult Education

On March 16, 1960, the House of Lords debated adult education (221 H.L. Deb. 1192–1258).

Youth Service

A ten-year development programme for the Youth Service to enable it to "advance on all fronts" is proposed in a report presented to Parliament by the Minister of Education on February 3, 1960. The report is by a special committee, under the chairmanship of the Countess of Albemarle, appointed by the Minister in November 1958 "to review the contribution which the Youth Service can make in assisting young people to play their part in the life of the

community, in the light of changing social and industrial conditions and of current trends in other branches of the education service; and to advise according to what priorities best value can be obtained for the money spent."

The Albemarle Committee points out in its report that the Youth Service derives from a statement of policy issued by the Board (now Ministry) of Education in 1939. But what was done then—at the beginning of the Second World War—was made possible only by the many years of work by voluntary organisations, the attempts by some local education authorities to co-ordinate voluntary work in their areas, and the steps taken by the central Government in the 1930s to promote social and physical training and recreation. What the Board of Education did " was to bring these three parties, state, education authority and voluntary organisation, into a working arrangement to which the term ' Youth Service ' has ever since been given."

Although the outlook of the Youth Service seemed bright in the immediate post-war years, the report continues, subsequently it " has not been given the treatment it hoped for and thought it deserved, and has suffered in morale and public esteem in consequence." Among the reasons for this comparative neglect were economic factors, and in education particularly, the need to spend as much as possible of the money available on building, equipping and enlarging schools to cope with the increasing number of children of school age, followed by the drive to provide more facilities for technical and technological education.

The committee feels that it was appointed at a crucial time for the Youth Service; first, because several aspects of national life, to which the Service is particularly relevant, are causing concern—including the " bulge " in the adolescent population, and the response of adolescents to " much more complex and continuous elements of social change "; and secondly, because " the Youth Service itself is in a critical condition."

The committee proposes that the first five years of the development programme should be devoted to immediate measures " to catch up with the situation already upon us," and the next five to " measures for sustained and continuous nourishment."

The main recommendations, which have been accepted in principle by the Minister of Education, include:

1. The Youth Service to be available to all young people aged 14 to 20 (*i.e.*, beginning before the ending of school life).
2. The establishment at once of a Youth Service Development Council. (The Minister of Education has announced that he himself will be the chairman.)
3. A " generous and imaginative " building programme to rehabilitate the service and equip it for expansion, and the provision of better furniture, equipment, lighting and decoration to make centres more attractive to modern adolescents.
4. Expenditure by local education authorities sufficient to sustain the momentum of development, and bigger financial grants by the Ministry of Education to national voluntary youth organisations.
5. The revision, without delay, of local education authority further education schemes and expansion of training arrangements for part-time youth leaders.
6. A long-term scheme for training " professional " youth leaders and an emergency scheme for a big increase in their numbers by 1966.
7. The appointment of a representative committee to negotiate salary scales for full-time youth leaders.
8. A national campaign for more voluntary helpers, and development of the voluntary principle at every level of activity.
9. Opportunities for young people to participate as " partners " in the Youth Service.

The purpose of the Youth Service is to provide for the continued social and informal education of young people " in terms most likely to bring them

to maturity." It is illogical, the committee considers, that while there is ample provision for social activities for those who remain in full-time education, up to the end of university studies, there is only limited provision at present for the early school-leavers, whose need for such resources is so much greater. The committee estimates that only one in three young people are at the moment being reached by the Youth Service.

A properly supported Youth Service can help many more individuals to find their own way better, personally and socially; it must be a backing for and not an alternative to family life. The Service should be both an integral part of the educational system and contributory to the welfare of an industrial society: industry and commerce should have more representatives on local education authority and voluntary organisation committees.

The committee emphasises that, at a time when many young people feel tempted to reject adult experience and authority, the Youth Service should not seem to offer a way of life, set of values or code as though these were things which came ready-made without having been tested in living experience. Young people must have the liberty to question cherished ideas, attitudes and standards, and if necessary to reject them. At the same time, the Youth Service cannot shirk its responsibility to help them in their search for values.

Association of the right kind and training of the right kind are primary aims of a Youth Service. To these two the committee adds a third: challenge. A fundamental task must be to encourage young people to come together in groups of their own choosing where they may develop their sense of fellowship, mutual respect and tolerance. A congenial atmosphere can also be effective in promoting readiness to learn; at present the majority of early school-leavers, and particularly girls, lack opportunities to have continued educational experience or to develop their personality at work. There are many healthy, self-confident, well-balanced young people, but there are others who find it difficult to come to terms with society and whose social incapacity can take many forms, from shyness to exhibitionism and crime. The committee hopes that a revivified and better provided service would make a wider appeal than at present and help many of them to outgrow their difficulties. Attention is drawn in the report to the excessive public attention being paid to young people today, to the distortions implicit in common generalisations about them, and to the fact that juvenile delinquents are a very small minority; the committee is left " predominantly with a sense of respect and admiration for most young people's good sense, goodwill, vitality and resilience."

The young should be given more responsibility for organising their own activities. " We think, for instance," says the report, " that after one or two trial runs young people are capable of initiating and running adventure schemes which are likely to be more probing because they themselves have drawn them up." A high priority should be given to making good the shortage of facilities for physical recreation, both indoors and outdoors. Apart from team games, activities such as badminton, camping, canoeing, dancing, fencing, golf, judo, mountaineering, pot-holing, sailing, swimming are valuable for their informality and opportunities for social mixing; " the fact that some of them were until recently beyond the means of the majority must not obscure the fact that they could now be made available to substantial numbers of wage earners."

Some young people are too wary or too deeply estranged to accept, at first anyway, even the slight commitment of club membership. " We should like to see more experiments made to cater for their social needs in the unconstrained way they appear to seek ": the coffee bar sited strategically where they tend to congregate; the " drop-in " club where they pay by the evening for what they get; the experimental youth centre or workshop where they can come without registering as members.

The report stresses the great importance of the voluntary principle. Compulsory attendance is a feature of school life, but young people in Britain go to a club of their own free will and leave if the activities fail to hold their interest. Voluntary help is no less important. There are great numbers of

people ready to give up their time to help with youth activities: "it is vital for young people to understand that many of the older generation are genuinely anxious to make friends and share their interests."

The committee outlines a long-term scheme for training full-time leaders to be recruited from teachers, social workers, and mature persons with a gift for leadership; and also a scheme for emergency training to meet the need to raise the number of full-time leaders from the present figure of 700 to about 1,300 by 1966. As the first leaders to be trained in three-year teacher training courses will not be available for full-time youth work until 1966, an emergency training college, offering a one-year course for men and women, should be opened before September 1961.

The committee believes that local authorities will need to spend considerably more than their present annual total of about £2¾ million. The Youth Service should not, however, subsist entirely on public funds; increased contributions must be found from voluntary sources as well. "We should like to see a concerted campaign designed to explain to the public generally what the Youth Service can do and how much it depends on their support." The committee is of the opinion that young people generally will be prepared, and should be encouraged, to pay more than many do at present for Youth Service facilities; but charges should be related to what is offered, "and the right time to raise subscriptions is when the facilities themselves are being improved."

The Minister of Education announced in the House of Commons on February 3 that the recommendations of the Albemarle Committee would be implemented as soon as possible, in consultation with local authorities. In the next two years starting work on new buildings by local authorities and voluntary organisations would be authorised up to a cost of about £3 million; grants to voluntary projects would be increased; there would also be increased grants to the headquarters' expenditure of the voluntary organisations and for approved experiments in attracting young people now not using the Youth Service. The Government would also finance the expansion of facilities for training full-time youth leaders, and hoped that an emergency training college would be open by January 1, 1961.

(Cmnd. 929; for Ministerial statements, see 616 H.C. Deb. 999–1004, 220 H.L. Deb. 885–889, February 3, 1960; for debates see 620 H.C. Deb. 40–180, March 21, 1960 and 222 H.L. Deb. 149–244, March 23, 1960; the above summary is based on Commonwealth Survey, C.O.I., February 16, 1960.)

Government Functions and Appointments

Agriculture

Agricultural Land Commission. The Accounts have been published of the management and farming of land by the Agricultural Land Commission and the Welsh Agricultural Land Sub-Commission, 1958–59, together with the report of the Comptroller and Auditor General thereon (H.C. 134 of 1959–60).

Bank Rate

On January 21, 1960, the Bank of England announced an increase in Bank Rate from 4 to 5 per cent. This is the first change since November 20, 1958, when it was reduced from 4½ to 4 per cent. (and see 616 H.C. Deb. 33–35, January 26, 1960).

Cabinet documents and discussions

Questions have been asked and statements made in Parliament, arising out of Sir Anthony Eden's published memoirs, concerning access to Cabinet documents, and reference to Cabinet discussions, by ex-Ministers (616 H.C. Deb. 366–370, January 28, 1960; 1221–1223, February 4, 1960; 618 H.C. Deb. 571–574, February 25, 1960; 619 H.C. Deb. 1477–1478, March 17, 1960; 220 H.L. Deb. 643–645, January 26, 1960).

Civil Service

Pay. A list has been published of the administrative and executive class pay scales, 1920–1959 (620 H.C. Deb. 208–214, March 22, 1960).

Companies

Government-appointed directors. A list has been published of the 104 companies to the boards of which the Government appoints directors (620 H.C. Deb. 193–203, March 22, 1960).

Delegation of powers

The Provincial Commissioner of the Western Province caused M. to be detained in custody in purported pursuance of regulations 16 and 47 of the Emergency Powers Regulations, 1956, made by the Governor of Northern Rhodesia under the Emergency Powers Orders in Council, 1939 and 1956. Regulation 16 (1) provided: "Whenever the Governor is satisfied that for the purpose of maintaining public order it is necessary to exercise control over any person, he may make an order . . . against such person directing that such person be detained." Regulation 47 provided: "The Governor may . . . depute any person . . . to exercise all or any of the powers conferred on the Governor by these Regulations." The Governor had deputed the Provincial Commissioner to exercise his powers of detention. The High Court of Northern Rhodesia, holding that the Governor himself had to be satisfied of the necessity of exercising control, and that he had not been so satisfied, awarded M. £25 damages. *Held,* dismissing an appeal from the Federal Supreme Court of Rhodesia and Nyasaland, allowing an appeal from the High Court of Northern Rhodesia, that the power and duty under regulation 16 (1) were so interwoven that it was not possible to split the one from the other, so as to put the duty on one person and the power in another; whosoever exercised the power must carry out the duty; the only duties on the Governor were those which were appurtenant to powers conferred on him and were in the nature of conditions or limitations on the exercise of the powers; all those could be delegated under regulation 47 and, accordingly, the detention order was valid: MUNGONI *v.* ATT.-GEN. OF NORTHERN RHODESIA [1960] 2 W.L.R. 389; [1960] 1 All E.R. 446, P.C.

Ministers' functions

Defence. The Report on Defence, 1960, has been published (Cmnd. 952).

Post Office. The report on Post Office Capital Expenditure, 1960–61, has been published (Cmnd. 973).

A White Paper has been published, containing proposals designed to give practical recognition to the commercial character of the Post Office. The proposals maintain direct control of the Post Office by the Postmaster-General, who will remain responsible to Parliament. The main features of the Paper are the separation of Post Office finances from the Exchequer, the abolition of the annual Parliamentary Estimate procedure and the Treasury control that goes with it, and its replacement by effective—but nevertheless flexible—Parliamentary control. The Post Office staff will remain civil servants (Cmnd. 989; and see 620 H.C. Deb. 1146–1149 and 222 H.L. Deb. 442–446, March 29, 1960).

Monetary System

The Minutes of Evidence and the principal memoranda of written evidence of the Committee on the Working of the Monetary System (Chairman: Lord Radcliffe) have been published (H.M.S.O. 63–150, 63–161–1, 63–161–2, 63–161–3).

Private interests of Ministers

The Home Secretary on January 28, 1960, repeated a statement made by Sir Winston Churchill on February 25, 1952, concerning the conditions which governed the relationship of Ministers with firms likely to obtain official contracts (616 H.C. Deb. 371–373). Subsequently the Minister of Transport made a personal statement (616 H.C. Deb. 380–381).

Research

Agricultural Research Fund. The account of the receipts into and the issues out of the Agricultural Research Fund, 1958–59, has been published together with the report of the Comptroller and Auditor General thereon (H.C. 145 of 1959–60).

Royal Commissions and Committees of Inquiry

A list has been published of the Commissions and Committees on social and economic matters appointed since January, 1955, with details (618 H.C. Deb. *169–174*, March 3, 1960; see also 619 H.C. Deb. 1122–1123, March 15, 1960).

Housing

Debate

On March 17, 1960, the House of Commons debated housing on an Opposition motion (619 H.C. Deb. 1484–1618).

Interest rates

On March 9, 1960, the House of Commons debated, on the adjournment, local authority interest rates on housing (619 H.C. Deb. 593–602).

Requisitioned houses

The Requisitioned Houses Act, 1960 (8 & 9 Eliz. 2, c. 20) received the Royal Assent on March 22, 1960. The Act enables the Minister of Housing and Local Government to extend the period for which possession of requisitioned houses may be retained by local authorities under the Requisitioned Houses and Housing (Amendment) Act, 1955.

Slum clearance

The Ministry of Housing and Local Government has issued a Circular giving further guidance on the next phase of slum clearance. The Ministry suggests that local authorities should take stock of their individual progress with a view to submitting further proposals to the Minister (Circular No. 2/60).

Inquiries

Trade dispute

Where a union asks for bargaining status on behalf of a company's employees and the company refuses it there is a "difference" between employers and workmen within section 2 (1) of the Trade Disputes (Arbitration and Inquiry) Ordinance, 1950 (which is identical with the corresponding English legislation), and so a trade dispute.

A union claiming to act on behalf of a substantial majority of the employees of a company asked the company for bargaining status on their behalf to discuss the case of two of its members who had been dismissed. The company refused. The Governor appointed a board of inquiry under section 8 (1) of the Trade Disputes (Arbitration and Inquiry) Ordinance. The Company in the proceedings contended that the appointment was a nullity as there was no trade dispute. *Held*, that there was a trade dispute as defined by section

2 (1) of the Act to include a "difference between employers and workmen . . . connected with the employment or non-employment . . . of any person": BEETHAM *v.* TRINIDAD CEMENT [1960] 2 W.L.R. 77, P.C. (following dictum of Lord Wright in *National Association of Local Government Officers* v. *Bolton Corporation* [1943] A.C. 166, 189).

Transport

Air. The report by the Spanish Director-General of Civil Aviation on the accident to Dakota (DC-3) aircraft G-AM2D, which occurred on August 19, 1959, on Montsery Peak, Spain, has been published (C.A.P. 161).

Railway. The report has been published on the collision which occurred on February 17, 1959, between Slade Green and Dartford (dated August 19, 1959).

University

A person under a duty to act judicially need not offer to one of the parties to the dispute before him the opportunity to cross-examine witnesses against him if that party does not ask for it.

By clause 8 of the Statutes of the University of Ceylon "where the Vice-Chancellor is satisfied that any candidate . . . has acquired knowledge of . . . any paper before the date and time of the examination" he should report the matter to the Board of Residence and Discipline, and by clause 14 the Board might thereupon suspend the candidate from any examination for a period or indefinitely. A candidate was indefinitely suspended under the two clauses after a commission consisting of the Vice-Chancellor and two others, after hearing witnesses, decided that an allegation of prior knowledge by the candidate was substantiated. The candidate made no request to hear the witnesses or cross-examine and in letters and interviews from and with the commission the case against him was explained. *Held* that, though the Vice-Chancellor was under a duty to act judicially and in accordance with natural justice, he had done so. There was no obligation on him to tender witnesses unasked for cross-examination: UNIVERSITY OF CEYLON *v.* FERNANDO [1960] 1 W.L.R. 223; [1960] 1 All E.R. 631, P.C.

LOCAL GOVERNMENT

Corrupt practices

A person corruptly offers a gift within the meaning of section 1 (2) of the Public Bodies Corrupt Practices Act, 1889, if he offers it deliberately with the intention that the person to whom it is offered shall enter into a corrupt bargain. It is not necessary that he should intend the corrupt bargain to be carried into effect.

The appellant was charged with corruptly offering a gift to the mayor so that he should use his influence in favour of the appellant with the borough council. His case was that he offered it with the intention of exposing corruption if it was accepted but with no intention of ever carrying out any corrupt bargain which was reached. *Held,* that this defence should not be put to the jury: R. *v.* SMITH [1960] 2 W.L.R. 164, C.C.A.

Finance

Borrowing. The Treasury (Loans to local authorities) (Interest) Minute, 1960, increases the rates of interest chargeable on loans advanced from the Local Loans Fund to local authorities on the security of local rates (S.I. 1960 No. 135).

Distress for Rates. The Distress for Rates Act, 1960 (8 & 9 Eliz. 2. c. 12), received the Royal Assent on March 22, 1960. The Act consolidates, with corrections and improvements made under the Consolidation of Enactments Act, 1949, certain enactments relating to the recovery of rates.

Grant. The General Grant (Increase) (Scotland) Order, 1960, increases the aggregate amount of the general grants payable under Part 1 of the Local Government and Miscellaneous Financial Provisions (Scotland) Act, 1958, to county and town councils in Scotland for the years 1959–60 and 1960–61 from £50,125,000 to £51,285,000 and from £52,075,000 to £54,405,000 respectively (S.I. 1960 No. 292). An accompanying report by the Secretary of State for Scotland stated that account had been taken of the new Burnham Award, of all other known factors affecting the level of costs, prices, and remuneration and other pay awards (H.C. 82 of 1959–60; for debate on motion to approve, see 617 H.C. Deb. 1323–1357, February 17, 1960).

Rating and Valuation. On February 25, 1960, the House of Commons debated the local authority rate burden (618 H.C. Deb. 590–652).

A report has been published of Rates and Rateable Values in Scotland 1959–60 (H.M.S.O. 49–282–0–60).

The following decisions have been reported on the interpretation of section 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955: *Victory (Ex-Services) Association* v. *Paddington Borough Council* [1960] 1 W.L.R. 106; *Isaacs* v. *Market Bosworth R.D.C.* [1960] 1 All E.R. 433.

The term "mechanical engineering" includes something more than the science of mechanical engineering, *e.g.*, it includes the practice and technique of engineering. The Institute of Mechanical Engineers was founded as a voluntary association, its object being "to promote the development of mechanical engineering and to facilitate the exchange of information and ideas thereon." The income of the institution came, in the main, from members' subscriptions. *Held*, that the institution was not instituted for the purpose of science exclusively within section 1 of the Scientific Societies Act, 1843, nor was it "supported wholly or in part by annual voluntary contributions" within that section; accordingly the institution was not entitled to exemption from rates: INSTITUTION OF MECHANICAL ENGINEERS *v.* CANE AND WESTMINSTER CITY COUNCIL [1960] 2 W.L.R. 48; [1960] 1 All E.R. 129, C.A.

The fact that there were at the date for valuation reparable and temporary defects in the property ought not to be taken into account in arriving at the hypothetical rent which is the basis of the rateable value. *Semble* (1) The words "necessary to maintain the hereditament in a state to command that rent" at the end of section 2 (2) of the Valuation for Rating Act, 1953, modify only the immediately preceding words "other expenses if any" and not the earlier words "repairs and insurance." (2) The word "state" in section 2 (3) does not include state of repair. A ratepayer contended that as his flat was out of repair at the date at which it was valued, it must be valued as though on June 30, 1939, it had been in the same state of disrepair. *Held*, that the Lands Tribunal had rightly rejected this contention: WEXLER *v.* PLAYLE [1960] 2 W.L.R. 187, C.A.

The true effect of sections 3 and 4 of the Rating and Valuation (Apportionment) Act, 1928, is to equate "industrial purposes" with factory purposes, *i.e.*, purposes which make a hereditament a factory, and those words must bear the same meaning in section 22 (4) of the Rating and Valuation Act, 1925, as amended by the Rating and Valuation (Miscellaneous Provisions) Act, 1955, s. 5. A company sought rating relief under the Act of 1928 in respect of premises occupied by them for testing chain cables and anchors, pursuant to the Anchors and Chain Cables Act, 1899. In 1931 in *Grove* v. *Lloyds British Testing Co.* the House of Lords held that the premises were not an "industrial hereditament" within the Act of 1928 because the operations carried on therein were not factory purposes. On the passing of the Rating and Valuation Act, 1957, certain rating relief was granted to hereditaments falling to be assessed under section 22 (1) (*a*) of the Act of 1925 (as amended by the Act of 1955) and the company thereupon applied for an alteration of the assessment of their premises. *Held* (Morris L.J. dissenting) that, the premises were a "non-industrial building" within section 22 (4) (as added

by the Act of 1955) not being a factory " used wholly or mainly for industrial purposes "; accordingly, the premises were not entitled to rating relief: CROWE *v.* LLOYDS BRITISH TESTING CO. [1960] 2 W.L.R. 227; [1960] 1 All E.R. 411, C.A.

A decision of a local valuation court on one year's rate settled only the issue of that rate, it could not constitute an estoppel governing a decision on a later year's rate. A valuation court decided in 1951 that a society was exempt from rating under the Scientific Societies Act, 1843. By an Act of 1952 a new valuation list came into force on April 1, 1956, and the society's hereditament was entered on the new list with rateable value figures. The society claimed that it still qualified for exemption under the Act of 1843, and made a proposal for the alteration of the list. On the matter coming before the valuation court, the court decided that the question of the exemption had already been decided and accordingly refused to hear the valuation officer's objection unless he could bring evidence (which in fact he did not desire to do) to show some variation in the society's constitution or activities since 1951. On the valuation officer's appeal to the Lands Tribunal the society pleaded *res judicata*, but the tribunal rejected this plea. The society appealed. *Held,* dismissing the appeal, that no estoppel arose: SOCIETY OF MEDICAL OFFICERS OF HEALTH *v.* HOPE [1960] 2 W.L.R. 404; [1960] 1 All E.R. 317, H.L.

By section 16 (1) of the Valuation and Rating (Scotland) Act, 1956, ". . . every rate levied by a rating authority shall be paid by occupiers only." By s. 243 (1) of the Local Government (Scotland) Act, a rate was not payable in respect of land which was unoccupied throughout the whole of the year from Whitsunday to Whitsunday. Section 379 defined " occupier " as " any person in actual occupation of any land." A company purchased a warehouse with a view to using it as a bonded store for spirits. Certain alterations to the premises had to be carried out in order to make them secure in accordance with Customs regulations. Between March and June, 1958, the company carried out the required alterations and thereafter started to use it as a bonded store. The company had never previously used the premises for any purpose of their business as warehousemen. The local authority claimed rates in respect of the premises from Whitsunday 1957 to Whitsunday 1958. *Held,* that the company were not in " actual occupation " during the relevant period and therefore the premises were not liable for rates: ARBUCKLE SMITH & CO. *v.* GREENOCK CORPORATION [1960] 2 W.L.R. 435; [1960] 1 All E.R. 568, H.L.

Fire services

The Fire Services Act, 1959 (Commencement No. 3) Order, 1959, brought into operation on January 1, 1960, paragraphs (*c*) and (*d*) of section 1 and section 7 and the entries in the Schedule to the Fire Services Act, 1959, relating to sections 19 and 20 of, and the First and Second Schedules to, the Fire Services Act, 1947 (which relates to establishment schemes, fire brigade committees and management schemes) (S.I. 1959 No. 2260).

The Fire Services (Appointments and Promotion) Regulations, 1960, amend the Fire Services (Appointments and Promotion) Regulations, 1950, and enable persons employed as fire officers or firemen by the Northern Ireland Fire Authority to become members of a fire brigade in England (S.I. 1960 No. 130).

London

The Minutes of Evidence of the Royal Commission on Local Government in Greater London have been published for Days 47–63 (H.M.S.O. 73–35–47–63).

Meetings

Admission of the Press was debated in the House of Commons on the adjournment on February 1, 1960 (616 H.C. Deb. 749–762). On February 5,

1960, the Public Bodies (Admission of the Press to Meetings) Bill received a Second Reading (616 H.C. Deb. 1350–1454).

Admission of the Public. On March 14, 1960, the Committee on the above Bill was empowered to provide in the Bill for requiring members of the public to be admitted to meetings of bodies exercising public functions (619 H.C. Deb. 1064–1070).

Members

Interest. The Minister of Housing and Local Government gave figures relating to dispensations given under sections 76 and 95 of the Local Government Act, 1933, and the corresponding provisions of the London Government Act, 1939 (616 H.C. Deb. 7–9, January 26, 1960).

Police

On January 27, 1960 the House of Lords debated the police service (220 H.L. Deb. 700–766).

Powers

Where a local authority is paying money out of a fund provided by the general body of ratepayers, the authority must preserve a balance between the duty owed to that general body of ratepayers and the duty owed to the particular ratepayer in respect of whom the payment is made.

The St. Pancras Borough Council from time to time derequisitioned houses under the Requisitioned Houses and Housing (Amendment) Act, 1955, and made payments under section 4 (4) to the landlords of the difference between the recoverable rent and the rent which but for section 4 (4) would be recoverable. The council made no determination under section 4 (4), and, when the Rent Act, 1957, was passed, and the matter was brought to their attention, they refused to determine otherwise within the meaning of subsection (4) and continued to bear the difference, which had been increased in some cases by the exercise by landlords of their powers under the Housing Repairs and Rents Act, 1954 and the Rent Act, 1957. The district auditor considered that by omitting to make a determination under subsection (4) the council had acted contrary to law, disallowed an item of expenditure of £200 thereby incurred and surcharged that amount on the members of the council responsible for authorising the expenditure. Six members appealed. *Held,* dismissing the appeal, that it was the duty of the local authority under section 4 (4) to review periodically the rents and the tenants' ability or inability to pay and the district auditor was right in surcharging the £200 on the appellants: Taylor *v.* Munrow (District Auditor) [1960] 1 W.L.R. 151; [1960] 1 All E.R. 455, D.C. (applying *Roberts* v. *Hopwood* [1925] A.C. 578).

Public service vehicles

On February 9, 1960, the House of Commons approved a motion asking leave to bring in a Bill to make further provision with respect to the allowing of free travel or reduced fares on public service vehicles run by local authorities (616 H.C. Deb. 247–251).

Reorganisation

The Local Government Commission for England have sent their draft proposals to the local authorities and the other bodies concerned in their first three review areas, namely the Birmingham and Black Country conurbation, the rest of the West Midlands, and the East Midlands. The draft proposals are set out in three statements and a number of maps (dated March 1, 1960).

Social workers

On February 17, 1960, the House of Lords debated the Report of the Working Party on Social Workers in Local Authority Health and Welfare

Services (Chairman: Miss Younghusband) (221 H.L. Deb. 73–91, 95–153).

See also EDUCATION (above, p. 191), HOUSING (above, p. 196), TOWN AND COUNTRY PLANNING (below, p. 211).

MONOPOLIES AND RESTRICTIVE PRACTICES

Monopolies Commission

Chemical fertilisers. The report of the Monopolies Commission on the supply of chemical fertilisers was published on February 16, 1960. The President of the Board of Trade stated in the House of Commons on the same day that, as soon as the industry had had time to consider the report, he proposed, as a first step, to consult them on the various matters to which it gives rise, and to see how far they are prepared to give effect to, or co-operate in giving effect to, its conclusions (H.C. 267 of 1958-59; 617 H.C. Deb. 101-104).

Report. The annual report by the Board of Trade for 1959 has been published. The Commission have the following references before them: the supply of cigarettes and manufactured cigarette and pipe tobacco; the supply of machinery for the manufacture or packaging of cigarettes or of cigarette or pipe tobacco; the supply of electrical equipment for mechanically propelled land vehicles. Suggestions have been received during 1959 that the following subjects should be referred to the Commission: aluminium semi-manufactures, cartridges, colour films, glass insulated electric cables, newsprint, wallpaper (H.C. 128 of 1959–60).

Restrictive Practices Court

Agreements registered. The Registrar of Restrictive Trading Agreements announced on January 21, 1960, that, by the end of 1959, over one-third of the agreements in the register (some 770 out of 2,240) had come to an end entirely, or as regards their restrictive provisions, either because their restrictions had been declared by the Restrictive Practices Court to be contrary to the public interest or because the whole agreements (or the restrictions in them) had been or were being abandoned by the parties. The corresponding figure for January, 1959, was 150 agreements.

During 1959, the Restrictive Practices Court had 39 agreements before it. Seven of these were defended; the court found five to be contrary to the public interest, and one agreement and one restriction in another to be consistent with it. The court made orders, with the consent of the parties, declaring 32 undefended agreements contrary to the public interest. At the end of the year, 120 cases were at various stages of preparation for trial, and the first of them are due to come before the court next month. In addition to these 120 cases, there are a great many agreements closely related to them which may be expected to be directly influenced by the outcome of the 120.

The cumulative position at January 1, 1960, was as follows:

Agreements tried by the court	9
Agreements the subject of consent orders	34
Other agreements abandoned, or from which restrictions have been removed	730
Agreements in preparation for trial	120

Decision. The majority of the parties to an agreement, the subject of a reference to the Court, consented to be represented by their trade association, and the court so ordered. Six of the parties refused to be represented and neither delivered a statement of case nor entered an appearance. The registrar did not apply for an order under rule 23 of the Restrictive Practices Court Rules, 1957, against the six parties debarring them from taking any further part in the proceedings, and they were properly served with notice of the hearing of the reference, but they did not appear. At the hearing the trade association offered no

evidence but submitted to an order declaring that the restrictions in the agreement were contrary to the public interest, and the registrar, on the association giving an undertaking not to enforce the agreement or to introduce a similar one without giving 28 days' notice to the registrar, did not pursue, as against the association, a formal application for an order in the terms of section 20 (3) (a) and (b) of the Restrictive Practices Act, 1956. As against the six parties to the agreement who were not represented by the association, *Held*, that the registrar was entitled to a declaration in a form binding on the six parties that the restrictions were contrary to the public interest. *Re* National Association of British and Irish Millers Ltd.'s Scheme [1960] 1 W.L.R. 63.

National Health Service

Debate

On March 14, 1960, the House of Commons in Committee of Supply, debated the National Health Service (619 H.C. Deb. 1030–1052).

General practitioners

On March 14, 1960, the House of Commons, on the adjournment, debated the appointment of general practitioners (619 H.C. Deb. 1075–1088).

Remuneration

Royal Commission. The Report was published on February 18, 1960 (Cmnd. 939).

National Insurance

Benefits

On March 16, 1960, the House of Commons debated a motion to increase benefits (619 H.C. Deb. 1376–1440).

Contracting out

On March 23, 1960, certain information was given concerning application to the Registrar (222 H.L. Deb. 142–143).

Decisions

Earnings of person in business. A retirement pensioner in business declared earnings for year ended April 1957 to be £500. Insurance officer in July 1957 accepted this figure in estimating earnings for the current year and decided pension was extinguished. On production of accounts for the year ending April 1958, actual earnings warranted a smaller reduction of pension. *Held* (1) where a man carries on business the profits from which are received in considerable sums at long intervals of uncertain duration, the only reasonable basis of calculation is to take the earnings over a year; (2) where earnings are calculated year by year they have to be calculated by reference to the prior year unless there is evidence of a change of circumstances justifying review during the year; (3) when the accounts for the year ending April 1958 were produced, the insurance officer should have revised his original decision but there was no power to direct payment of pension for more than six months before the date on which the accounts were produced; (4) good cause was shown for delay in applying for review while the claimant was awaiting receipt of his accounts from the accountants: Decision No. R (P) 8/59.

Failure to attend for medical examination. On being directed to attend for examination by a medical officer of the Ministry of Health, claimant obtained a final certificate that he would be fit to resume work on the day before the date of examination and did not attend. On the day on which

the examination was due, however, he submitted an intermediate certificate obtained two days before which resolved the final certificate ineffective. He had avoided examination on several previous occasions in similar circumstances. *Held* that the claimant had not shown good cause for his failure to attend for examination and was disqualified for six weeks: Decision No. R (S) 12/59

Late claim. A woman became incapable of work on 30.6.58, but did not give notice of her incapacity to the Minister or claim sickness benefit until 7.1.59. She believed that she was not entitled to benefit because she had ceased to be employed in October, 1957, and since that date had been paying contributions as a non-employed person. She knew that contributions paid as a non-employed person could not qualify her for sickness benefit, and she did not suspect that she would still have some residual right to benefit by virtue of earlier contributions. *Held* that in respect of the period 7.7.58 to 1.11.58 she had good cause for delay in giving notice and claiming. The claimant's belief was not unreasonable and it would appear to her that she had no rights to inquire about. But no sum could be paid to her for any period earlier than six months before she gave notice of her incapacity: Decision No. R (S) 10/59.

A married woman (hospital cleaner) became incapable of work on 19.5.58, but did not claim sickness benefit until 21.7.58. She thought that because she had elected, in December 1957, not to pay National Insurance contributions she was no longer entitled to sickness benefit. *Held* that she had good cause for the delay in claiming. She did not make earlier inquiry into her rights because it seemed to her that she had no rights and that no inquiry was called for: Decision No. R (S) 11/59.

A woman of poor education applied for a provisional determination of her title to retirement pension on attaining sixty years of age. She did not receive the determination and when she did retire she was told at the National Insurance Office that she would be hearing from the local office of the district where she had formerly lived. No pension arrived and later her son made inquiries and learned what she should do. *Held* that good cause for her delay in claiming had been shown. Allowance had to be made for her limitations. Decision No. R (P) 10/59.

Leaving voluntarily: just cause. A local tribunal found that a police officer had just cause for voluntarily leaving his employment. *Held* that the case was not distinguishable from that dealt with in Decision R (U) 26/51, which had been brought to the notice of the local tribunal, and that the claimant had not just cause for leaving his employment when he did. The Commissioner emphasises that insurance officers and local tribunals should follow published decisions when the circumstances are not distinguishable, and points to the result of failure to do so. Decision No. R (U) 23/59.

A painter, living and working in England, left his employment to go to Scotland where his father was dying. Before going he made inquiries of his employer regarding employment on his return, but when he returned there was no vacancy owing to redundancy. *Held* that the inquiries made were tantamount to asking for leave of absence and he had just cause for leaving his employment voluntarily. Decision No. R (U) 32/59.

Residence in Great Britain. A woman in receipt of a retirement pension on her own insurance left Great Britain on 2.8.57 intending to live permanently in Portugal but she did not obtain a residence permit in that country until 12.2.58. She returned to Great Britain on 23.7.58 and left again for Portugal on 20.9.58. *Held* that she was a person not resident in G.B. immediately before January 27, 1958, when an increase of retirement pension was made effective by Regulations and therefore, disqualified by those Regulations for receiving the increase, except when she was in Great Britain. The question of residence depended upon intention. Claimant's contention that the Regulations did not apply to her was not accepted. Decision No. R (P) 6/59.

Retirement. A non-resident domestic servant who had been working for over twenty years for the same employer had latterly been working 30 hours a week at a wage of £2 10s. Her employer intended that when she attained retiring age, her hours would be reduced to eighteen a week. She would do light housework and sit with the employer's aged mother while the employer was out shopping. *Held* that she could be treated as retired from regular employment. Her duties were exceptionally light and a good deal of her working time might not involve much actual work. She was engaged in circumstances not inconsistent with retirement. Decision No. R (P) 11/59.

Earnings

On February 15, 1960, the House of Commons debated a motion to approve regulations to increase the amount which could be earned without loss of benefit by retirement pensioners and widows (617 H.C. Deb. 1028–1090). The House of Lords debated the same motion on February 16, 1960 (221 H.L. Deb. 18–22). The regulations were subsequently issued (S.I. 1960 No. 278).

Long-term hospital patients

A report has been published of the National Insurance Advisory Committee (Chairman: Sir Ifor Evans) on the question of Long-Term Hospital Patients. (Cmnd. 964).

National Insurance (Industrial Injuries)

Decisions of the Commissioner and the Tribunal

Accident while exploring premises. Claimant had been sent with other workmen to newly acquired premises to dispose of crates and bottles. During a lull in work, he and a fellow workman wandered off, without permission, to explore the building. Claimant opened a door in a dark corridor and fell sixteen feet, suffering serious injury. *Held* that the accident did not arise out of and in the course of the claimant's employment. Decision No. R (I) 45/59.

"Berry" aneurysm. A foundry worker, aged twenty-seven, suffered an industrial accident on March 11, 1958, when he received a blow on the left side of the head from a suspended gas torch, causing a slight contusion. He continued at work, but later complained of headaches off and on for the next fortnight. On April 1, 1958, he reported to the works' surgery in a distressed condition following an attack of faintness and vomiting. He was admitted to hospital and was found to be suffering from a subarachnoid haemorrhage due to rupture of an aneurysm of the right posterior communicating artery. The skull was not fractured. The spinal fluid was heavily blood stained, but showed no xanthochromia. *Held* it was improbable that the blow on the head on March 11, 1958, caused the subarachnoid haemorrhage which gave rise to incapacity on April 2, 1958. "Berry" aneurysm and the way it causes subarachnoid haemorrhage described. The relationship between trauma, stress and subarachnoid haemorrhage and the significance of xanthochromia discussed. Decision No. R (I) 43/59.

Course of employment. During an off-duty period a bus conductor left his vehicle and proposed to take a meal at the staff canteen. Taking ticket machines into the canteen was forbidden and staff were advised to leave them at the appropriate transport office. They were also required to do this at the completion of their duty. Whilst crossing the road on the way to the transport office to deposit his machine, the claimant was knocked down and injured. *Held* that as the claimant had not reached the end of his duty for the day he was not obliged to hand in his machine; nor was he obliged to visit the canteen. He had interrupted the course of his employment when he left the bus, and his journey to deposit his machine was made for his own purposes and not primarily for those of his employers. Distinction drawn between depositing ticket machine

during off-duty period, and doing so at the end of day's work. Decision No. R (I) 38/59.

Detached retina. A travelling representative became aware of impairment of vision whilst at work. He attributed the condition—detached retina—to strain of lifting a carton of goods weighing 42lb. four days earlier. *Held* that the claimant had not established that he suffered personal injury by accident arising out of and in the course of his employment. Balance of probabilities against the view that the detachment could have been caused by lifting four days earlier without the claimant during the interval observing anything wrong with his eye. Pathology of detachment of retina discussed. Decision No. R (I) 39/59.

Late appeal. There is no right of appeal from a tribunal chairman's refusal to extend the time for appealing. Distinction drawn between a decision of the tribunal and a decision of the chairman. Decision No. R (I) 44/59.

Suicide after accident. 1. *Held* that death was not the result of the industrial accident. Relationship between accidents and the development of melancholia discussed. 2. The chairman of the local appeal tribunal was the coroner who had sat at the inquest at which an open verdict had been returned. *Held* that regulation 15 (4) of the Industrial Injuries (Determination of Claims and Questions) Regulations does not apply to chairmen of local appeals tribunals; that the only ground on which the coroner would be disqualified from presiding over the tribunal was that his so presiding offended against the rules of natural justice; that in the circumstances he was not so disqualified as there was no real likelihood of his being biased, but that it was undesirable that a coroner, who has held an inquest on a deceased person, should, as tribunal chairman, adjudicate upon a benefit claim arising out of that person's death. 3. Tribunal chairmen reminded that a full note of all material evidence, formal or informal, given at the hearing should be recorded. Decision No. R (I) 42/59.

Travelling to work. A carpenter employed at a construction site missed his employer's bus and got a lift in a lorry belonging to another contractor. After alighting at a corner on the main approach road on the site some 200 to 300 yards short of his time office, he slipped and fell under the lorry. The road was new but was not fenced off and was freely used by the public. *Held* that he was not in the course of his employment as soon as he entered the main site, his work on that day, after clocking on, lying in a different area of the site from where he was injured. The accident happened to him as a member of the public on his way to work. Decision No. R(I) 21/59.

Nationalised Industries

General

Finance. The Chancellor of the Exchequer stated that information about prospective public investment in the nationalised industries would in future be published in the summer of the preceding year instead of in the spring of the year to which the figures related (619 H.C. Deb. 1113–1114, March 15, 1960).

Accounts have been published of the sums received by the Secretary of State for Scotland from the Consolidated Fund and from the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board in respect of interest and repayment of advances, and of the disposal of these sums respectively, 1958–59; together with the report of the Comptroller and Auditor General thereon (H.C. 85 of 1959–60).

Accounts have been published of the sums received by the Minister of Power from the Consolidated Fund and from the Central Electricity Authority, the Electricity Council and the Gas Council in respect of interest and repayment of advances, and of the disposal of those sums respectively, 1958–59 together with the report of the Comptroller and Auditor General thereon (H.C. 124 of 1959–60).

Airways

Borrowing powers. The Air Corporations Act, 1960 (8 & 9 Eliz. 2, c. 13) received the Royal Assent on March 22, 1960. It increases the borrowing powers of B.O.A.C. and B.E.A.

Guarantees. Statements have been issued by the Treasury on loans proposed to be raised by B.E.A. (H.C. 101 of 1959–60) and B.O.A.C. (H.C. 102 of 1959–60).

Coal

Advances. The Coal Industry Act, 1960 (8 & 9 Eliz. 2, c. 17) received the Royal Assent on March 22, 1960. It authorises further advances to the National Coal Board for capital purposes.

Electricity

Guarantees. Statements have been issued by the Treasury on loans proposed to be raised by the Electricity Council (H.C. 103 of 1959–60), the North of Scotland Hydro-Electric Board (H.C. 105 of 1959–60), and the South of Scotland Electricity Board (H.C. 106 of 1959–60).

Reports and accounts have been published of the North of Scotland Hydro-Electric Board and the South of Scotland Electricity Board (H.C. 92 and 93 of 1959–60).

Gas

Guarantee. A statement has been issued by the Treasury in respect of loans proposed to be raised by the Gas Council (H.C. 104 of 1959–60).

Transport

Consultative Committees. On February 8, 1960, the House of Commons debated, on the adjournment, the hearings conducted by Transport Users' Consultative Committees (617 H.C. Deb. 187–198).

Debate. On March 23, 1960, the House of Commons debated the affairs of the Commission in giving a Second Reading to the British Transport Commission Bill (620 H.C. Deb. 568–627).

Guarantee. A statement has been issued by the Treasury on loans proposed to be raised by the British Transport Commission (H.C. 107 of 1959–60).

Guillebaud Committee. The report of the Railway Pay Committee of Inquiry (Chairman: Mr. C. W. Guillebaud) was published on March 2, 1960.

Prime Minister's statement. On March 10, 1960, the Prime Minister made a statement in the House of Commons about the position of the British Transport Commission. This had, he said, to be considered in all its aspects, commercial, financial and social. Owing to the decreasing carriage of minerals, including coal, and the increasing use of road transport, the expansion of the economy had not led to the recovery in railway earnings which might reasonably have been expected some years ago. The British Transport Commission's total deficit had increased very rapidly over the last five years, and now amounted to some £350 million. For the calendar year 1960, the deficit was estimated at £80 million, including interest on British Transport stock. This reflected an operating loss on the railways currently estimated at £45 million a year on the basis of present performance after making allowance for the 5 per cent. interim addition to wages. In addition to the £80 million deficit, there was £15 million interest on the advances to meet accumulated deficits.

The Prime Minister went on to say that the financial implications of the Guillebaud Committee Report had to be taken into account. The Government accepted the objective underlying the report—that fair and reasonable wages should be paid to those engaged in the industry; but it felt that others must

accept corresponding obligations. First, the industry must be of the size and pattern suited to modern conditions and prospects. In particular, the railway system must be re-modelled to meet current needs, and the modernisation plan must be adapted to this new shape. Those working in the industry must accept this as the only way of bringing about conditions in which a fair award, not only in terms of money, but of satisfaction with their job, could be secured.

Secondly, he explained, the public must accept the need for the changes, which would involve certain sacrifices of convenience, for example, in the reduction of uneconomic services and some increases in fares and charges. It would also be necessary to examine urgently the question of relieving the industry of restrictions and obligations which limited the commission's earnings and prevented it from making the best use of its resources.

Thirdly, the commission must accept a radical alteration of its structure so as to secure a more effective distribution of functions and a better use of all its assets. Management should be decentralised, so that individual undertakings, including the regions of the British Railways, should, as far as practicable, be made fully self-accounting and responsible for the management of their own affairs. The detailed application of these principles to all the commission's undertakings was a matter of urgency, and it would be worked out by special planning boards, which would be appointed by the Government and report both to the Government and to the commission. Legislation, as well as administrative action, would certainly be required. Meanwhile, the commission was securing expert advice on regional accounting for the railways.

Finally, there was the problem of finance. In the short term, the problem was to devise interim financial arrangements to enable the railway system to be carried on until the necessary re-organisation could be made effective. The Government was now considering what form these should take. In the long term, financial arrangements must depend on the size and structure of the undertaking, and must indeed form an essential part of the general re-organisation.

"The life and trade of the nation," the Prime Minister concluded, "require a railway system, but it must not be allowed to become an intolerable burden on the national economy. The commission, the trade unions, the public, and the Government will all have to co-operate in the new approach. I feel sure that they are in the mood to do so."

The Prime Minister expanded and explained his point of view in answer to questions. He stressed that the first need was that there should be an amicable settlement of the wages question, through the ordinary processes of negotiation between the commission and the trade unions. It would then be possible to see what was involved in short-term finance. He suggested that the exploitation of some of the commission's assets, including some of the land and development assets, should be handed over to a specialised expert body, and expressed the view that some of these assets should be sold to repay part of the commission's £350 million debt to the Treasury (619 H.C. Deb. 642–652; see also 221 H.L. Deb. 1016–1022, March 10, 1960).

See also PARLIAMENT (below, p. 207); Commonwealth Survey, C.O.I.; and see 620 H.C. Deb. 1318–1321, March 30, 1960).

PARLIAMENT

Accommodation (House of Commons)

On March 31, 1960, the House of Commons debated a Government motion on accommodation and amenities (620 H.C. Deb. 1522–1654; see also 618 H.C. Deb. 1000–1004, March 1, 1960).

Election Petitions

The Election Petition Rules, 1960, replace in modern form (with a few minor and consequential changes in procedure) the Rules relating to parliamentary and local government election petitions. Some of the existing

provisions have been omitted in reliance on the general practice and procedure of the High Court, which will apply notwithstanding any different practice followed by committees of the House of Commons in dealing with election petitions before 1868. It will thus be possible for the election court to make orders for the discovery and inspection of documents and the delivery of interrogatories although such orders were not made by committees of the House of Commons (S.I. 1960 No. 543).

Estimates Committee (House of Commons)

Report. The Select Committee has published its Second Special Report on U.K. Atomic Energy Authority (Observations of the Minister for Science) (H.C. 80 of 1959–60).

Nationalised industries

On February 25, 1960, the Leader of the House of Commons said that provided Questions on nationalised industries related to Ministers' responsibilities for matters of general policy, they would consider sympathetically the extent to which they could properly reply (618 H.C. Deb. 577–583; see also 620 H.C. Deb. 478–480, March 23, 1960).

Northern Ireland

Statute. A law permitting the refusal of planning permission without compensation is not a law made so as to "take any property without compensation" within section 5 (1) of the Government of Ireland Act, 1920, and so is not made unconstitutional by that Act.

Belfast Corporation, as the interim development authority, refused an application under section 2 of the Planning (Interim Development) Act (Northern Ireland), 1944, for permission to build certain buildings, on the ground that some were not high enough and others were to be used for purposes other than those for which the land was zoned. *Held,* (1) that the arbitrator to whom a claim for compensation was referred was not entitled to award compensation provided he was satisfied on proper evidence that the Minister considered the provisions reasonable in accordance with section 10 (2) of the Planning and Housing Act (Northern Ireland), 1931. For that section, which precludes compensation for injurious affection on account of provisions in a planning scheme prescribing the height or use of buildings, was constitutional and was validly incorporated into the above Act of 1944. (2) The correct way to prove that the Minister considered the provisions reasonable was by a certificate under his seal, not by oral evidence of a civil servant: BELFAST CORPORATION *v.* O.D. CARS [1960] 2 W.L.R. 148; [1960] 1 All E.R. 65, H.L. (following *Central Control Board (Liquor Traffic)* v. *Cannon Brewery Co.* [1919] A.C. 744).

Privilege

To impugn the validity of the report of a Select Committee of the House of Commons, especially one which has been accepted as such by the House by being printed in the House of Commons Journal, is contrary to section 1, art. 9, of the Bill of Rights, and any comment on it is irrelevant.

The defendants bona fide and without malice published an extract from a report of a Select Committee of the House of Commons defamatory of the plaintiff, who sued them for libel. *Held* that the defendants were entitled to the statutory defence provided by section 3 of the Parliamentary Papers Act, 1840: DINGLE *v.* ASSOCIATED NEWSPAPERS [1960] 1 All E.R. 294n., Pearson J.

Procedure

A debate on the recommendations in the report of the Select Committee on Procedure took place in the House of Commons on February 8, 1960.

After a full discussion during which a number of suggestions were put forward and considered by members on both sides of the House, five recommendations were adopted. The more important changes in procedure will have the effect of reducing the number of oral questions allowed per member per day from three to two, and of giving extra time for debates on motions to be moved by private members and chosen by means of a ballot (617 H.C. Deb. 33–186; see also 245–246, February 9, 1960).

Public Accounts Committee (House of Commons)

Report. The Special Report from the Committee together with Proceedings of the Committee has been published (H.C. 51 of 1959–60).

Questions to Ministers

On January 26, 1960, some discussion took place in the House of Commons on the discretion of Ministers to decide who should answer Questions and how responsibility should be determined (616 H.C. Deb. 43–49).

Representation

On February 19, 1960, the House of Commons debated a proposal in a Bill, to lower the minimum age of voting to 18 years (617 H.C. Deb. 1607–1673).

Statutes

The Distress for Rates Act, 1960 (see above p. 197), the Air Corporations Act, 1960 (see above p. 206), the Coal Industry Act, 1960 (see above p. 206) the Requisitioned Houses Act, 1960 (see above p. 196), the Local Employment Act, 1960 (see below p. 209), the Road Traffic Act, 1960 (see below p. 210) received the Royal Assent on March 22, 1960.

See also WIRELESS AND TELEVISION (below, p. 213).

PUBLIC AUTHORITIES

Industrial Estates Management Corporations

The Local Employment Act, 1960 (8 & 9 Eliz. 2, c. 18), received the Royal Assent on March 22, 1960. It makes provision to promote employment in localities in England, Scotland and Wales where high and persistent unemployment exists or is threatened, and to make consequential provision as respects the industrial estates companies. The Act establishes three corporations, namely, the Industrial Estates Management Corporation, the Industrial Estates Management Corporation for Scotland, and the Industrial Estates Management Corporation for Wales, charged with the exercise of functions conferred on them by the Act.

The Local Employment Act, 1960 (Commencement) Order, 1960, brought the Act into operation on April 1, 1960 (S.I. 1960 No. 562).

Inland Revenue Commissioners

Report of the Commissioners of Inland Revenue 1958–59 has been published (Cmnd. 922).

Iron and Steel Board

A statement has been made by the Minister of Power, with the approval of the Treasury, in regard to remuneration and allowances payable to the Deputy Chairman of the Iron and Steel Board as from June 1, 1960 (H.C. 131 of 1959–60).

Iron and Steel Holding and Realisation Agency

The report and statement of accounts, for 1958–59, have been published (H.C. 57 of 1959–60).

Sugar Board

Accounts have been published for 1958–59 together with the report of the Comptroller and Auditor General thereon (H.C. 137 of 1959–60).

White Fish Authority

Accounts have been published for 1958–59 together with the report of the Comptroller and Auditor General thereon (H.C. 77 of 1959–60).

Road Traffic

The Road Traffic Act, 1960 (8 & 9 Eliz. 2, c. 16) received the Royal Assent on March 22, 1960. The Act consolidates certain enactments relating to road traffic. Part III of the Act (sections 117 to 163) is concerned with the classification of public service vehicles, traffic areas and traffic commissioners, licensing of public service vehicles, road service licences, special provisions as to the British Transport Commission's road services in the London Passenger Transport area, appeals in connection with licences and certificates for public service vehicles, drivers' and conductors' licences, the regulation of the conduct of drivers, conductors and passengers, and general and supplementary provisions. Part IV of the Act (sections 164–191) is concerned with carriers' licences, the procedure governing the grant of carriers' licences, the variation, revocation, suspension and curtailment of carriers' licences, maintenance of goods vehicles, records of hours of work, etc., and supplementary provisions.

See also Local Government (above p. 197).

Scotland

See Courts (above p. 190), Government Functions and Appointments (above p. 194), Nationalised Industries (above p. 205), Subordinate Legislation (below p. 210), Tribunals and Judicial Functions of Ministers (below p. 212).

Subordinate Legislation

Parliamentary proceedings

Select Committee on Statutory Instruments (*House of Commons*). On February 2 and 16, March 1 and 15, the Committee considered 51, 54, 16, and 16 instruments respectively and resolved that it was unnecessary to draw the special attention of the House to them. The Committee asked for memoranda from Government Departments in respect of five instruments.

In their Second Report, the Committee drew the special attention of the House to the Teachers' Salaries (Scotland) Regulations, 1959 (S.I. 1959 No. 2150), on the ground that it made unexpected use of the powers conferred by the Statute under which it was made. In the Second Report also, the Committee drew the special attention of the House to the Pensions Appeal Tribunals (Scotland) (Amendment) Rules, 1959 (S.I. 1959 No. 2067), on the ground that there appeared to have been unjustifiable delay in the laying of it before Parliament (H.C. 18–V, 18–VI, 18–VII, 18–VIII).

Special Orders Committee (*House of Lords*). In the third, fourth, fifth, and sixth Reports, the Committee examined 26 instruments and found that no

further special inquiries were necessary before the House decided to approve them (H.C. (41), (51), (61), (64) of 1959–60).

Town and Country Planning

Advertisement control

Appeals. On January 26, 1960, the Minister of Housing and Local Government gave details, for 1959, of the number of appeals by advertising interests (1,637), the number dealt with by hearings (40) and the number dealt with by correspondence (1,597) (616 H.C. Deb. 7–8).

Regulations. The Town and Country Planning (Control of Advertisements) Amendment Regulations, 1960, amend the Town and Country Planning (Control of Advertisements) Regulations, 1948. As regards areas of special control, they enable a planning authority to revoke or vary orders defining such areas and to permit a wider range of advertisements therein (regs. 4 and 5). An authority must give reasons for serving a notice requiring application to be made for express consent for the continued display of an advertisement; and if they issue a notice refusing consent, that notice may also contain a notice requiring discontinuance of the display within a stated period (regs. 3 and 8 (2)). Planning authorities are required to consult with certain interested bodies only in cases where they wish to grant consent to an advertisement display (reg. 7). The normal period of express consent becomes five years instead of three, and the imposition of a shorter period is deemed to be a condition for which reasons must be given (reg. 9). Other amendments extend deemed consent to advertisements for inns, public houses and agricultural demonstrations, define the types of express consent which may be given, and refer to public safety in relation to navigation (regs. 6, 8 (1), 2 and 10) (S.I. 1960 No. 66).

The Ministry of Housing and Local Government has issued a circular explaining that these amending regulations enlarge the discretion of planning authorities to grant express consent for the display of certain necessary kinds of advertisement in areas of special control, simplify and otherwise improve some of the procedures, and make a few minor amendments which stem from experience in administration over the past few years (Circular No. 3/60).

Delegation

On February 1, 1960, the House of Commons debated a motion (which was withdrawn) to annul the Town and Country Planning (Delegation) Regulations, 1959 (S.I. 1959 No. 1915) (616 H.C. Deb. 734–748).

Enforcement notice

An essential element in an enforcement notice is that development should have taken place and an aggrieved person can challenge the allegation of development on any of the three grounds mentioned in section 23 (4) (*a*) of the Town and Country Planning Act, 1947.

M. was granted planning permission, in April 1952, to use land as a caravan site, on the condition that only three caravans should be sited on the land. In August 1952, there were, however, eleven caravans; in 1954, fourteen; and in July 1958, twenty-six. In August 1958 an enforcement notice was served on M. alleging development within the four years preceding the service of the notice, and that the development consisted of a material change of use by using the land as a site for more than three caravans. The notice alleged that the condition had not been complied with. The magistrates dismissed a complaint by M., by which he sought to quash the notice. *Held* that the notice should be quashed (1) because it was an essential element in an enforcement notice that development should have taken place, and a notice based on a breach of condition on which permission was

granted could be quashed on the ground that the development alleged had not taken place, or on any other of the grounds set out in section 23 (4) (*a*) of the Act of 1947; (2) because M. was not precluded from contending that permission had not been needed; and (3) because the development alleged by the notice was an increase in the number of caravans beyond three, and that had taken place more than four years before the service of the notice: MOUNSDON *v.* WEYMOUTH AND MELCOMBE BOROUGH COUNCIL [1960] 2 W.L.R. 484; [1960] 1 All E.R. 538, D.C.

Use Classes

The Town and Country Planning (Use Classes) (Amendment) Order, 1960, excludes shops for the sale of motor-vehicles from the general class of shop, within which, under the Town and Country Planning (Use Classes) Order, 1950, changes of use may take place without involving development (S.I. 1960 No. 282).

The Town and Country Planning General Development (Amendment) Order, 1960, amends the Town and Country Planning General Development Orders of 1950 and 1959. It extends the obligation of local planning authorities to consult with local highway authorities to cases where the authority deciding an application for planning permission under delegated powers is not the highway authority (reg. 2 (*a*)). It gives a general permission enabling a shop for the sale of motor-vehicles to be used as a shop of any kind. A shop for the sale of motor-vehicles is taken out of the general class of shop (changes of use within which do not involve development) by the Town and Country Planning (Use Classes) (Amendment) Order, 1960 (reg. 2 (*b*)). It limits the size of buildings which may be erected on agricultural land for agricultural purposes under the general permission given by Class VI of the General Development Order of 1950 (reg. 2 (*c*)). It eliminates the obligation to give public notice of an application for planning permission for a gymnasium or a swimming bath which is to form part of a school, college or university (reg. 3) (S.I. 1960 No. 283).

The Ministry of Housing and Local Government has issued a Circular drawing attention to the provisions of these new Orders. The main purpose of the latter Order is to bring the erection of large agricultural buildings under planning control, thereby ensuring where necessary, that these large buildings are sited with a due regard to local amenities. In the Minister's view, the Order accentuates the need for consultation and co-operation between planning authorities and local representatives of farming and land-owning interests. By the Town and Country Planning (Use Classes) (Amendment) Order, 1960, the change of use of a shop to use for the sale of motor-vehicles will constitute development requiring planning permission. In making this amendment, the Minister is concerned primarily with the effects which these changes of use may have on road traffic and, in certain circumstances, to local amenity (Circular No. 10/60).

TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS

General

On March 8, 1960, the Attorney-General said that the Tribunals and Inquiries Act, 1958, had implemented most of the recommendations of the Committee on Administrative Tribunals and Enquiries. Effect was given to further recommendations by the Land Powers (Defence) Act, 1958, sections 3 and 5 of the Agriculture Act, 1958, Part III of the Town and Country Planning Act, 1959, and the Family Allowances and National Insurance Act, 1959. Recommendations about legal representation before tribunals have been implemented by several statutory instruments. With respect to statutory inquiries affecting land, effect was given to a number of the committee's recommendations by circulars issued by the Secretary of State for Scotland and the Minister of

Housing and Local Government. Other minor recommendations have been implemented by administrative action (619 H.C. Deb. *26–27*).

Lands Tribunal

See LOCAL GOVERNMENT (above p. 197).

Pensions Appeal Tribunals

The Pensions Appeal Tribunals (Scotland) (Amendment) Regulations, 1960, amend the Pensions Appeal Tribunals (Scotland) Regulations, 1926, by deleting the provision which prevents the Tribunal from paying a fee or travelling or subsistence allowance to a doctor or other witness adduced by an appellant (S.I. 1960 No. 350). See also SUBORDINATE LEGISLATION (above p. 210).

WALES

Developments

A report has been published on developments and Government action in Wales and Monmouthshire (Cmnd. 961).

See also GOVERNMENT FUNCTIONS AND APPOINTMENTS (above p. 194).

WIRELESS AND TELEVISION

British Broadcasting Corporation

Yugoslav service. On February 10, 1960, a Member of the House of Commons referred to the disquiet that existed over the conduct of this service. The Joint Under-Secretary of State for Foreign Affairs said that the service was successful in its purpose of getting British news and views to a very large number of Yugoslav listeners and that the service was not influenced by Communism, either from Yugoslavia or from this country (617 H.C. Deb. 443–444).

Parliamentary proceedings

Television. On March 1, 1960, the Prime Minister said that the Government were satisfied that the proposal to televise proceedings in the House of Commons did not at present command the support necessary to justify so radical a departure from our traditions (618 H.C. Deb. 1025–1027; see also 617 H.C. Deb. 1421–1423, February 18, 1960).

COMMONWEALTH AND DEPENDENT TERRITORIES

GENERAL

Colonial research

Reports have been published of the Colonial Research Council, the Committee for Colonial Agricultural, Animal Health and Forestry Research, the Colonial Economic Research Committee, the Colonial Fisheries Advisory Committee, the Colonial Medical Research Committee, the Colonial Pesticides Committee, the Colonial Products Council, the Colonial Road Research Committee, the Colonial Social Science Research Council, the Tsetse Fly and Trypanosomiasis Committee, the Director of the Anti-Locust Research Centre and of research matters not covered by the above reports of the specialist advisory bodies (Cmnd. 938).

Colonial services

On March 15, 1960, the House of Commons debated Colonial services in Committee of Supply (619 H.C. Deb. 1181–1253).

Commonwealth affairs

On March 15, 1960, the House of Commons debated Commonwealth affairs in Committee of Supply (619 H.C. Deb. 1135–1181).

Commonwealth Institute

The Commonwealth Institute Order, 1959, revises the arrangements for appointing Governors of the Commonwealth Institute, by enabling each of the Commonwealth countries mentioned in section 8 of the Imperial Institute Act, 1925, as from time to time amended, to appoint a Governor; and by enabling appointments of all the Governors to be made on such terms as the appointing authority thinks suitable, instead of for a fixed period of three years (S.I. 1959 No. 2210).

Prime Minister's visit to Africa

On February 16, 1960, the Prime Minister made a statement in the House of Commons, which was followed by a short debate (617 H.C. Deb. 1132–1142; see also 221 H.L. Deb 24–30).

On February 18, 1960, the Prime Minister was questioned on his opportunities to meet African and Asian leaders in South Africa (617 H.C. Deb. 1413–1421).

Basutoland, Bechuanaland and Swaziland

High Commissioner

The Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) (Amendment) Order in Council, 1960, amends the provisions of the Basutoland, Bechuanaland Protectorate and Swaziland (Office of High Commissioner) Order in Council, 1959, in regard to the appointment of an Acting High Commissioner by deleting the reference to Deputy High Commissioner since that appointment is to be abolished and substituting therefor Chief Secretary which is a new office created with effect from March 30, 1960 (S.I. 1960 No. 441).

British Honduras

New Constitution

The report has been published of the British Honduras Conference (Cmnd. 984).

Complete agreement on a new constitution for British Honduras and a wide measure of agreement on future economic policy were reached during discussions which took place in London in February between the United Kingdom Government and a representative delegation from British Honduras. The conference was convened by the United Kingdom Government to consider proposals for the amendment of the constitution of British Honduras and to discuss the main features of future economic policy for the territory.

The existing constitution dates from 1954 and provides for an Executive Council with a majority of unofficial members as the chief instrument of policy, a Legislative Assembly with an elected majority, and universal adult suffrage. The Executive Council consists of the Governor, as chairman, 3 *ex-officio* members (the Colonial Secretary, the Attorney-General and the Financial Secretary) and 6 members of the Legislative Assembly, elected by the Assembly, of whom not less than 2 must be drawn from the nominated unofficial members. Responsibility for steering certain aspects of government business through the legislature was given to three elected members of the Executive Council in 1955; they have been called steering members. Three other unofficial members assist as associate members. The Legislative Assembly consists of a nominated Speaker, the 3 *ex-officio* members who serve on the Executive Council,

3 nominated unofficial members and 9 elected members. The members elect one of their number, excluding the *ex-officio* members, to be Deputy Speaker.

In recent years, there had been discussions between the United Kingdom Secretary of State for the Colonies and the Governor of British Honduras about the next step in constitutional advance. In 1959, Sir Hilary Blood was appointed Constitutional Commissioner to inquire into the working of the present constitution and to make recommendations for any changes which might be thought desirable. His recommendations were considered by the Executive Council and by the Legislative Assembly in British Honduras and formed the starting point of the conference in London.

The conference was opened by the United Kingdom Secretary of State for the Colonies on February 1 and held, in all, ten plenary sessions and a number of discussions with individual groups. The British Honduras delegation consisted of the Governor, 3 officials, 5 unofficial members of the Executive Council, and 6 other delegates nominated by the Legislative Assembly and political parties. It was, therefore, widely representative of all aspects of political opinion in the territory. Complete agreement was reached on all the constitutional issues before the conference, and the report of the proceedings was signed on February 17.

It was agreed that the composition of the Executive Council, of which the Governor will remain chairman, should be changed. In addition to the Colonial Secretary (now to be styled Chief Secretary) and the Attorney-General, there will be six unofficial members as at present, but, of these, the minimum number of nominated members will be one instead of two. Five portfolios, one that of Finance, will be held by unofficial members. The post of Financial Secretary will be replaced by that of Permanent Secretary of the Ministry of Finance. He will attend meetings of the Executive Council, but will not be a member of that Council, or of the Legislative Assembly.

The leader of the party obtaining a clear majority in a general election will be appointed by the Governor as First Minister. The remaining seats on the Executive Council held by unofficials will be filled by election by the unofficial members of the Legislative Assembly from among their own number. The First Minister will then in effect complete the formation of a government by tendering to the Governor advice in accordance with which the Governor will allocate the ministerial portfolios. The First Minister will have the right to require the resignation of any of the unofficial ministers. The resulting vacancy would be filled by election by the Legislative Assembly.

The number of elected members in the Legislative Assembly will be increased from 9 to 18, and the number of nominated members from 3 to 5. The Chief Secretary and the Attorney-General will remain *ex-officio* members. The life of the Assembly itself will be increased from 3 to 4 years. The 5 seats for nominated members will be filled by the Governor, after consulting the First Minister, in respect of 2 seats and the leader of the minority party in respect of 1 seat. The Governor will fill the 2 remaining seats after consultation with the leaders of both the majority and minority parties.

At the unanimous request of the unofficial members of the delegation it was agreed that a declaration reaffirming their desire to remain within the British Commonwealth should appear in the form of a preamble to the new Constitution Ordinance. This will state that the people of British Honduras desire to advance towards self-government within the Commonwealth and reaffirm " the ancient and unswerving loyalty of the people of British Honduras to the Crown and to the person of Her Majesty, Queen Elizabeth the Second." At the final session of the conference the representatives of the People's United Party and the National Independence Party made a declaration which " recognised the grave affront to the People of British Honduras caused by the persistent propaganda of the Government of Guatemala in furtherance of their unfounded claims to sovereignty over the territory."

On behalf of the United Kingdom Government the delegation was given an assurance that there would at no time be any question of British Honduras

joining the Federation of the West Indies unless that issue had been put before the people of British Honduras at a general election, and they had clearly expressed a desire to do so.

The conference discussed the report on an economic inquiry presented to the British Honduras Government in October 1959 by Mr. Jack Downie, a Senior Economic Adviser at Her Majesty's Treasury. The conference began by agreeing that the central feature of policy should be planned immigration aimed at the development of an agricultural economy based upon both plantations and individual small-holdings. Much thought would have to be given to the sociological aspects of such a plan; and very careful investigation over a wide field would be necessary to determine the probable character, scale and rate of progress which could be achieved. It would be particularly important to ascertain to what extent sources outside British Honduras could supply any necessary funds over and above those available from British Honduras's own resources. These investigations should be prosecuted with all energy by the United Kingdom Government and the Government of British Honduras.

The conference also discussed and reached agreement upon many other economic and financial problems. On some, including the desirability of a development bank and of suitable incentive legislation to attract investment from abroad, the conference reached agreement in principle in the course of its deliberations. Others, such as the size and manner of United Kingdom financial aid to British Honduras in the immediate future, were left for detailed discussion between the Government members of the delegation and the Colonial Office.

Agreement was reached upon either the action or the further consideration which the British Honduras Government should undertake to deal with other outstanding problems. Among these were, for example, the designation of development areas, the future of the forest industry and the organisation of the Government in the making and execution of economic policy. (Commonwealth Survey, March 1, 1960.)

Cyprus

Constitutional discussions

A round-table conference on Cyprus was convened in London on January 16, 1960, to review the work of the London Joint Committee in drafting the final treaties giving effect to the conclusions of the London Conference of February 1959, with a view to reaching final decisions on outstanding questions in time for the transfer of sovereignty by the planned date of February 19, 1960. The conference was adjourned on January 18, without completing its work, and it was announced that the transfer of sovereignty had been postponed for one month. The most critical stage of the talks concerned the delimitation of the areas to be retained in full sovereignty by the United Kingdom as military bases (see 616 H.C. Deb. 636–645, February 1, 1960).

The Under-Secretary of State for the Colonies visited Cyprus at the beginning of February for further discussions. On February 8 it was announced that the independence date would have to be postponed indefinitely (see 617 H.C. Deb. 232–240, 305–366, February 9, 1960).

The discussions continued.

Dominica

Constitution

The Dominica (Constitution) Order in Council, 1959, makes new provision for the government of Dominica. In particular it provides for an Administrator appointed by Her Majesty, an Executive Council, and a Legislative Council and contains certain provisions relating to the Public Service and financial matters (S.I. 1959 No. 2199).

The Dominica (Constitution) (Amendment) Order in Council, 1959, corrects a small error in the Dominica (Constitution) Order in Council, 1959 (S.I. 1960 No. 202).

See also WINDWARD AND LEEWARD ISLANDS (below p. 232).

GHANA

Constitutional Proposals

The Ghana Government's proposals for a republican constitution which, it is anticipated, will come into force on July 1, 1960, have been published in Accra in a White Paper. They will be placed before Ghana's National Assembly for endorsement and then submitted to a plebiscite in April, when the people of Ghana will also choose a President. The draft constitution, which is summarised below, has not, it is stated, been copied from the constitution of any other country but has been designed to meet the particular needs of Ghana.

"The object of the draft constitution is to provide firm, stable and popular government in Ghana so that Ghana can assist in achieving a union of African States and territories. Apart from facilitating the entry of Ghana into a union of African States and territories, the draft constitution is also designed to enable peoples who are at present outside Ghana but who are linked by racial, family and historical connections with Ghanaian peoples to join them in one integrated state."

Article 2 of the draft constitution reads: "In the confident expectation of an early surrender of sovereignty to a union of African States and territories, the people now confer on parliament the power to provide for the surrender of the whole or any part of the sovereignty of Ghana."

The constitution provides for a President with executive power, a cabinet appointed by him, and a National Assembly of a Speaker and not fewer than 104 members elected by adult suffrage.

The President, who will be eligible for re-election and who must be a Ghanaian citizen of at least thirty-five years of age, will exercise all the powers at present exercised by the Governor-General and the Prime Minister. He will not be a member of the National Assembly, but will be entitled to address the Assembly and to send messages to parliament when he so desires. Unless he dies or resigns during the lifetime of a parliament, his term of office will be identical with that of the National Assembly. The first President of the Republic will be named in the constitution. Any Ghanaian citizen over 35 years of age may be nominated as a candidate for the first presidency by any ten Members of Parliament.

The system proposed for electing the President, once the constitution has been established, is as follows. At the general election, every parliamentary candidate can give notice that he supports a particular candidate for the presidency, but before doing so the parliamentary candidate must secure the permission of the presidential candidate whom he seeks to support. No presidential candidate can be nominated unless his nominators are prepared to make a declaration that they believe parliamentary candidates in at least half the constituencies in the country will pledge their vote to him if elected. "The reason for this is to make it certain that the only persons who can stand for President are those who have a chance of commanding a majority in the National Assembly. Once a parliamentary candidate has publicly declared his support for a presidential candidate, and has obtained that presidential candidate's permission to do so, his decision is irrevocable, and if he is elected as a Member of Parliament his vote is automatically cast in favour of the presidential candidate for whom he declared his support." If any presidential candidate has the declared support of more than half the elected Members of Parliament, he is automatically declared President. In the event of no one presidential candidate obtaining a clear majority, the President is elected by the Members of the National Assembly voting by secret ballot, the Members

having been released from their previous declaration of preference for a particular presidential candidate.

Until his successor assumes office, the outgoing President continues in office. If the President resigns or dies during his term of office, the duty of choosing a President to serve until the National Assembly is dissolved is entrusted to that body.

The President will have a cabinet of at least eight ministers, who must be members of the National Assembly. These Cabinet ministers are chosen and dismissed by the President. The President will preside at Cabinet meetings and, subject to the general powers of the President, the Cabinet will have control over the government of the country in the same way as it has under the existing constitution.

Parliament will consist of the President and National Assembly, which in turn will consist of a Speaker and not less than 104 members. These members will be elected by secret ballot by Ghanaian citizens over the age of 21. Subject to the limitations imposed by the constitution, the power of Parliament to make laws is unlimited, and neither the President, the Cabinet, nor the law courts can change the law without the authority of parliament. No taxation can be imposed unless the tax has been first approved by the National Assembly. The President will have power to veto either part or the whole of a Bill passed by the National Assembly. Sessions of parliament will be opened by a statement by the President on Government policy.

There will be a general election every five years, as under the present constitution, but the President will have the power to dissolve parliament at any time. By so doing, the President must either retire from office or submit himself for re-election. The present National Assembly, which is due to be dissolved by, at the latest, July 1961, will become the first National Assembly of the Republic. The forthcoming plebiscite will, it is stated, correspond very nearly to a general election and if " the presidential election shows that in fact there would be little change in the balance of parties in the Assembly if a further election were held, the government will consider that this gives them a mandate to recommend the extension of the life of the existing Assembly ".

The present system of a Supreme Court, divided into a Court of Appeal and a High Court, will continue, but all appeals from the courts to the Judicial Committee of the Privy Council in the United Kingdom will be discontinued. The President will re-appoint the judges, whose Letters Patent issued in the name of the Queen will automatically lapse on the establishment of the republic. The Chief Justice and every other judge of the Supreme Court will be appointed by the President by instrument under the public seal, and will only be removable from office by the President " on an address of the National Assembly carried by not less than two-thirds of the Members thereof praying for his removal on the ground of stated misbehaviour or infirmity of body or mind ".

There will be a House of Chiefs for each region of Ghana. These Houses will have " such functions relating to customary law and other matters, as may be provided by law ".

The President will become the Commander-in-Chief of the armed forces and will have the right, in the interests of national security, to dismiss or suspend any member of the armed forces, whatever his rank or position.

The final responsibility for the civil service will rest with the President, who will be assisted and advised by a civil service commission on all matters of discipline, entry and promotion in the service.

The repeal or amendment of any of the entrenched provisions contained in the constitution can only be made after approval has been signified in a referendum. Apart from the entrenched provisions, the constitution can be amended by an ordinary Act of Parliament.

No provision is included in the draft constitution in regard to membership of the Commonwealth. It is stated, however, that it is the intention of the Prime Minister of Ghana to attend the Conference of Commonwealth Prime Ministers to be held in London in May 1960. The Prime Minister will then

tell the other Commonwealth Prime Ministers of the result of the plebiscite and, if the people have voted in favour of the draft constitution, will inform them that Ghana will become a republic, but wishes to remain within the Commonwealth. (Commonwealth Survey, C.O.I., March 15, 1960.)

Gibraltar

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–17–58).

Grenada

Constitution

The Grenada (Constitution) Order in Council, 1959, makes new provision for the government of Grenada. In particular it provides for an Administrator appointed by Her Majesty, an Executive Council and a Legislative Council and contains certain provisions relating to the Public Service and financial matters (S.I. 1959 No. 2200).

Royal Instructions

The Grenada Royal Instructions, 1959, dated December 21, 1959, came into operation on January 1, 1960. They provide for leave of absence for the Administrator, the forwarding of Ordinances and reserved Bills, the publication of Ordinances, the disposition of public land, the power of pardon in capital cases, and the administration of oaths of allegiance.

See also Windward and Leeward Islands (below p. 232).

Jamaica

Constitution

The Jamaica (Constitution) (Amendment) Order in Council, 1959, has been made.

The purpose of this Order is to provide that the Governor, acting on the recommendation of the Police Service Commission, may delegate powers relating to the Police Force to other officers besides the Commissioner of Police, to validate, with retrospective effect to the date of commencement of the new Constitution, the exercise of such powers by such officers in accordance with the law in force before that date, and to make it clear that regulations and instruments made during the period during which the Fifth Schedule to the principal Order has effect will continue in force thereafter. The opportunity has also been taken to correct a minor error in section 91 of the principal Order (S.I. 1959 No. 2202).

Kenya

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–26–58).

Constitutional proposals

The following is a summary of the main proposals arising from the Kenya Constitutional Conference, which have been endorsed by the United Kingdom Government and are contained in a White Paper published on February 25, 1960 (Cmnd. 960).

The Legislative Council will have 65 elected members: 53 of these will be directly elected on a common roll; 12 will be " National " members.

The position of minority communities on the common roll will be safeguarded by the reservation of 20 of the 53 seats. Candidates for these reserved seats will be chosen by a system of primary elections within the communities

concerned. Reservation of seats within the 20 reserved seats will be: 10 European, 8 Asian and 2 Arab.

National members will be elected directly by elected members of the Legislative Council, and will comprise 4 Africans, 4 Europeans, 2 Asian non-Moslems, 1 Asian Moslem and 1 Arab.

The Governor will retain the right to nominate members to the Legislative Council to ensure an effective working majority. But "if elected members becoming ministers brought with them to the Government benches a substantial number of supporters, the need to exercise this power would be reduced".

The Council of Ministers will consist of 12 ministers, of whom 4 will be officials and 8 unofficials, with an Arab representative having the right of attendance. The unofficials will be 4 Africans, 3 Europeans and 1 Asian. The Governor will select ministers at his discretion. Further thought is being given to the problem of how to make heard, in the Executive, the voice of whichever Asian community (Moslem or non-Moslem) is not represented by the single Asian minister.

It was announced in the conference report that the Governor of Kenya wishes to bring some further African members into his Council of Ministers at once, without waiting until the new constitution is in force. The Secretary of State for the Colonies welcomed this idea, and discussions have taken place with the African elected members of the Legislative Council, who are said to be considering the matter favourably.

For all common roll seats in the legislature the franchise will introduce the following alternative qualifications. Voters must either (*a*) be literate in their own language; or (*b*) be over forty years of age; or (*c*) be an office holder in a wide range of scheduled posts at the time of registration; or (*d*) have an income of £75 a year.

It is proposed that the new constitution should embody certain provisions safeguarding fundamental human rights, including the protection of property rights and the preservation of the independence of the judiciary.

A special committee was appointed from among the delegates to the London conference to consider the question of safeguards. After discussion, both in the committee and outside, in which full agreement was not reached, the Secretary of State for the Colonies made a statement (reproduced in the White Paper) informing the conference of the United Kingdom Government's views.

"It is the firm view of Her Majesty's Government," he said, "that legal provisions are needed in the proposed constitution, which will be made by Order in Council, to provide for the judicial protection of human rights. . . . In this section of the constitution, Her Majesty's Government consider it important to include protection of property rights. Only by this means will it be possible to maintain confidence, and to encourage development and investment, including the attraction of overseas capital, not only in the immediate future, but also in the long term. Accordingly, Her Majesty's Government think it right to include provisions founded on the principle that there should be no expropriation of property except to fulfil contractual or other legal obligations upon the owner, or for purposes to the benefit of the country (due regard being paid to human needs and individual hardship, confidence and stability, and advantage to the country's economy). Full and fair compensation should be given to the owner of any property expropriated, together with the right of recourse to the courts (including the normal channels of appeal) for the judicial determination of his rights, and of the amount of compensation to be paid to him.

"I want to turn next to something else which I regard as vitally important; that is, to maintain the independence of the Judiciary. The appointment of judges must not be a political matter, and they should continue for the time being to be appointed by the Governor, in accordance with Her Majesty's instructions. At a future stage in Kenya's constitutional advance, it will be necessary to establish a Judicial Service Commission for this purpose. The present provisions regarding the tenure of office of judges should be retained."

The Secretary of State went on to stress the importance of agriculture to Kenya's well-being and the "special need to see that land development is maintained, that investment in land is increased and in particular that Africans are encouraged and helped to take a greater share in the agricultural industry."

The Government of Kenya, he said, was undertaking an immediate review of agricultural development schemes already in operation, and would also consider what further capital should be provided to enable more to be done towards the development of the land, including approved resettlement schemes, with special reference to helping forward African farming.

"In the light of this review, Her Majesty's Government will be ready to consult with financial institutions and with other authorities to help find this capital. The International Bank are already considering a scheme related to African areas, and they will now be approached to see whether they would favour participation in a more comprehensive project. To show the belief of Her Majesty's Government in the value of such a scheme, I am glad to say here and now that Her Majesty's Government will undertake, in the light of the Kenya Government review, that £5 million in loans will be available from the above or other sources for re-lending."

The United Kingdom Government has also been considering the financial problems of all the United Kingdom dependencies in East Africa, particularly in regard to their difficulties in finding money to develop African agriculture and education; and has reached the decision that, as from July 1, 1960, it would assume financial responsibility for the cost of the East African Land Forces. The recurrent cost of the Forces to Kenya in the present financial year is estimated at £1,128,000.

The Secretary of State suggested to the conference that the approach to self-government should be accompanied by a steady increase in the number of local people recruited to the Kenya Civil Service. He added: "I am thinking especially of Africans, whose advance here has been held up by their late start in educational development."

This suggestion was welcomed by the conference, as was the Secretary of State's announcement that an inter-territorial conference was to be held in London in March 1960, under the chairmanship of the Permanent Under-Secretary of State for the Colonies, to consider what more could be done to promote the building up of local civil services by local recruitment.

The conference also welcomed the statement by the Governor of Kenya that he intended to appoint a working party under the chairmanship of the chairman of the Public Service Commission, and including local non-official members, to advise on ways of accelerating the localisation of the public service in Kenya.

After the conference had studied the constitutional proposals, the Secretary of State summarised his understanding of the views of the various groups. These were:

The United Party (an all-European group) were entirely opposed to the constitutional proposals, but had been anxious to take part in the further discussion on safeguards and other related matters.

The Asian and Arab elected members of the Kenya legislature, although having reservations, particularly about the composition of the Council of Ministers, were prepared to accept the proposals.

The African constituency-elected members of the legislature, although having reservations, particularly about the level of the franchise, the proportion of African ministers, and the position of the "National" members, were prepared to accept the proposals as the next stage of Kenya's constitutional development.

The New Kenya Group (an inter-racial organisation), on the assumption that the wide measure of agreement at the conference would be reflected in general support in Kenya for stable government and true co-operation of all races in all spheres, and that there would be an early agreement on the principles of all necessary safeguards, agreed with the African elected members and others that the constitution of Kenya in the next stage should be as

authorised in the proposals. (Commonwealth Survey, C.O.I., March 1, 1960; see also 221 H.L. Deb. 867–868, March 8, 1960; see also 222 H.L. Deb. 305–420, March 28, 1960).

Kuwait

Ruler of Kuwait

The Kuwait (Amendment) Order, 1960, has been made. The purpose of amending Order is to provide for the gradual return of jurisdiction to the Ruler of Kuwait, by Queen's Regulations (S.I. 1960 No. 207).

Mauritius

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–28–58).

Constitution

The Mauritius (Constitution) (Amendment No. 2) Order in Council, 1959, amends the Mauritius (Constitution) Order in Council, 1958 (dated December 21, 1959).

Montserrat

Letters Patent

The Montserrat Letters Patent, 1959, dated December 21, 1959, came into operation on January 1, 1960. They provide for the appointment of an Administrator, an acting Administrator, a Deputy to the Administrator, and of an Executive Council.

Royal Instructions

The Montserrat Royal Instructions, 1959, dated December 21, 1959, came into operation on January 1, 1960. They provide for leave of absence for the Administrator, the forwarding of Ordinances and reserved Bills, the publication of Ordinances, the disposition of public land, the power of pardon in capital cases, and the administration of oaths of allegiance.

See also Windward and Leeward Islands (below p. 232).

Nigeria

Constitution

The Nigeria (Constitution) (Amendment) Order in Council, 1960, amends the provisions of the Nigeria (Constitution) Order in Council, 1954, as amended, relating to the Speaker of the House of Representatives, defence, the jurisdiction of the courts and the police (S.I. 1960 No. 203).

Rhodesia and Nyasaland

Advisory Commission

Various matters relating to the Monckton Commission and its work were raised in Parliament. See 616 H.C. Deb. 37–42 (protection of witnesses), 43–49 (questions to Ministers), January 26, 1960; 370–371 (terms of reference) January 28; 1191–1194 (protection of witnesses) February 4; 617 H.C. Deb. 229 (colonial civil servants' evidence); 229–231 (terms of reference) February 9; 1423–1424 (terms of reference), 1424–1425 (Mr. Chirwa), February 18; 618 H.C. Deb. 187–189 (terms of reference), February 23; 1422–1423 (colonial civil servants' evidence), March 3; 220 H.L. Deb. 646–652 (protection of witnesses), January 26; 771–776 (terms of reference), January 28; 788–789 (protection of witnesses), February 2.

Northern Rhodesia

The Northern Rhodesia Order in Council, 1960, makes fresh provision for the appointment and tenure of office of judges of the High Court of Northern Rhodesia under the Northern Rhodesia Orders in Council, 1924 to 1957, amends and revokes certain Articles concerning the High Court and makes provision for concurrent appointments (S.I. 1960 No. 204).

Additional Instructions were given to the Governor of Northern Rhodesia relating to the constitution of the Executive Council of Northern Rhodesia (dated February 8, 1960).

See also GOVERNMENT FUNCTIONS AND APPOINTMENTS (above p. 194).

ST. CHRISTOPHER, NEVIS AND ANGUILLA

Letters Patent

The Saint Christopher, Nevis and Anguilla Letters Patent, 1959, dated December 21, 1959, came into operation on January 1, 1960. They provide for the appointment of an Administrator, an acting Administrator, a Deputy to the Administrator, and of an Executive Council.

See also WINDWARD AND LEEWARD ISLANDS (below p. 232).

ST. LUCIA

Constitution

The Saint Lucia (Constitution) Order in Council, 1959, dated December 21, 1959, makes new provision for the Government of Saint Lucia. In particular it provides for an Administrator appointed by Her Majesty, an Executive Council and a Legislative Council and contains certain provisions relating to the Public Service and financial matters.

Royal Instructions

The Saint Lucia Royal Instructions, 1959, dated December 21, 1959, came into operation on January 1, 1960. They provide for leave of absence for the Administrator, the forwarding of Ordinances and reserved Bills, the publication of Ordinances, the disposition of public land, the power of pardon in capital cases, and the administration of the oath of allegiance.

See also WINDWARD AND LEEWARD ISLANDS (below p. 232).

ST. VINCENT

The Saint Vincent (Constitution) Order in Council, 1959, makes new provision for the Government of Saint Vincent. In particular it provides for an Administrator appointed by Her Majesty, an Executive Council and a Legislative Council and contains certain provisions relating to the Public Service and financial matters (S.I. 1959 No. 2201).

See also WINDWARD AND LEEWARD ISLANDS (below p. 232).

SARAWAK

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–33–58).

SIERRA LEONE AND THE GAMBIA

Court of Appeal

The Sierra Leone and the Gambia Court of Appeal (Amendment) Order in Council, 1960, amends the provisions of the Sierra Leone and the Gambia Court of Appeal Order in Council, 1959, relating to the qualifications of the judges (S.I. 1960 No. 440).

Singapore

Colonial Report

The Report for 1957 has been published by the Colonial Office (H.M.S.O. 58–1–49–57).

Somaliland

Constitution

The Somaliland (Constitution) Order in Council, 1960, establishes reformed Executive and Legislative Councils for the Somaliland Protectorate.

The Executive Council consists of the Governor as President, three *ex officio* Members and four other Members who are Members of the Legislative Council, and the Governor may charge Members of the Executive Council with departmental responsibilities.

The Legislative Council consists of a Speaker, three *ex officio* Members and thirty-three Elected Members.

This Order also establishes a Public Service Commission to be constituted and to function in accordance with regulations to be made by the Governor (S.I. 1960 No. 205).

Royal Instructions

Additional Instructions, dated February 8, 1960, were issued to the Governor of the Somaliland Protectorate, replacing certain clauses of Instructions issued in 1955.

South Africa

Commonwealth Prime Ministers' Meeting

On March 24, 1960, the Prime Minister was asked about the attendance of the Prime Minister of South Africa at the forthcoming conference in London in May (620 H.C. Deb. 671–673).

Prime Minister's Speech

At the conclusion of his African tour Mr. Macmillan addressed the South African Parliament in Cape Town on February 3, 1960.

He began by saying that it was a special privilege for him to be in the Union of South Africa in the year 1960 when the fiftieth anniversary of the Union was being celebrated. He was most grateful to the South African Government for all the trouble they had taken in making the arrangements for his visit, which had enabled him to see so much in so short a time, and everywhere he had gone he had been received in a spirit of friendship which he valued all the more because he knew that it was an expression of South African goodwill to all the people of Britain.

In the fifty years of their nationhood the people of South Africa had built a strong economy founded on healthy agriculture and thriving and resilient industries. No one could fail to be impressed by the immense material progress which had been achieved and of which he had been able to see something during his tour. That all this had been accomplished in so short a time was a striking testimony to the initiative, energy and skill of the South African people. The people of Britain were proud of the contribution they had made to this remarkable achievement. Much of it had been financed by British capital. According to a recent survey made by the Union Government nearly two-thirds of overseas investment outstanding in the Union at the end of 1956 was British. The trade between the Union and the United Kingdom was to the common advantage. South Africa exported to the United Kingdom raw materials, food and gold and the United Kingdom in return sent the Union consumer goods and capital equipment. The United Kingdom took a third of all South African exports and supplied a third of all South African imports. The economies of the two countries, while developing rapidly, had yet remained interdependent and capable of sustaining one another.

In addition to building a strong economy South Africa had also played an important part as an independent nation in world affairs. Mr. Macmillan said that, as a soldier in the First World War and as a Minister in Sir Winston Churchill's Government in the Second, he knew personally the value of the contribution which South Africa's forces had made to victory in the cause of freedom. In the Korean crisis South Africa played its full part and in the period of reconstruction South African resources greatly assisted the recovery of the sterling area in the post-war world. South African readiness today to provide technical assistance to the less well-developed parts of Africa was of immense help to the countries which received it and was a source of strength to the friends of the Union in the Commonwealth and elsewhere in the Western World. South Africa's collaboration in the work of the Commission for Technical Co-operation in Africa south of the Sahara and in the United Nations Economic Commission for Africa proved its determination, as the most advanced industrial country of the continent, to play its full part in the new Africa of today. Mr. Macmillan said that as he had travelled through the Union he had found everywhere, as he expected, a deep preoccupation with what was happening in the rest of the African Continent. He understood and sympathised with South African interest in these events and anxiety about them.

The Prime Minister went on to say: "In the twentieth century, and especially since the end of the war, the processes which gave birth to the nation-states of Europe have been repeated all over the world. We have seen the awakening of national consciousness in peoples who have for centuries lived in dependence on some other power.

Fifteen years ago this movement spread through Asia. Many countries there of different races and civilisations pressed their claim to an independent national life.

Today, the same thing is happening in Africa. The most striking of all the impressions I have formed since I left London a month ago is of the strength of this African national consciousness. In different cases it may take different forms but it is happening everywhere. The wind of change is blowing through the continent.

Whether we like it or not, this growth of national consciousness is a political fact. We must all accept it as a fact. Our national policies must take account of it.

Of course you understand this as well as anyone. You are sprung from Europe, the home of nationalism. And here in Africa you have yourselves created a full nation—a new nation. Indeed in the history of our times yours will be recorded as the first of the African nationalisms.

And this tide of national consciousness which is now rising in Africa is a fact for which you and we and the other nations of the Western World are ultimately responsible.

For its causes are to be found in the achievements of Western civilisation in pushing forward the frontiers of knowledge, applying science in the service of human needs, expanding food production, speeding and multiplying means of communication and, above all, spreading education."

The great issue in the second half of the twentieth century was whether the uncommitted peoples of Asia and Africa would swing to the East or to the West. Would they be drawn into the Communist camp? Or would the great experiments in self-government that are now being made in Asia and Africa, especially within the Commonwealth, prove so successful, and by their examples so compelling, that the balance would come down in favour of freedom and order and justice? "The struggle is joined and it is a struggle for the minds of men. What is now on trial is much more than our military strength or our diplomatic or administrative skill. It is our way of life."

The uncommitted nations wanted to see before they chose. What could the West show them to help them choose right? Each of the independent members of the Commonwealth must answer that question for itself.

It was the basic principle for our modern Commonwealth that members

respected each other's sovereignty in matters of internal policy. At the same time, members had to recognise that in the modern world the internal policies of one nation might have effects outside it. " We may sometimes be tempted to say to each other, ' Mind your own business ' but in these days I would myself expand the old saying so that it runs, ' Mind your own business, but mind how it affects my business, too '."

What Governments and Parliaments in the United Kingdom had done since the war in according independence to India, Pakistan, Ceylon, Malaya, and Ghana, and what they would do for Nigeria and the other countries now nearing independence—all this, though the United Kingdom took full and sole responsibility for it, it did in the belief that it was the only way to establish the future of the Commonwealth and of the free world on sound foundations.

British policy was also of deep and close concern to South Africa, for nothing that was done in this small world could be done in a corner or remain hidden. What the United Kingdom did in West, Central, and East Africa became known to everyone in the Union, whatever his language, colour, or tradition.

" Let me assure you in all friendliness that we are well aware of this, and that we have acted and will act with full knowledge of the responsibility we have to you and to all our friends. Nevertheless, I am sure you will agree that in our own areas of responsibility we must each do what we think right. What we think right derives from long experience, both of failure and success, in the management of our own affairs.

We have tried to learn and apply the lessons of both. Our judgment of right and wrong and of justice is rooted in the same soil as yours—in Christianity and in the rule of law as the basis of a free society.

This experience of our own explains why it has been our aim, in countries for which we have borne responsibility, not only to raise the material standards of living but to create a society which respects the rights of individuals—a society in which men are given the opportunity to grow to their full stature, and that must, in our view, include the opportunity to have an increasing share in political power and responsibility; a society in which individual merit, and individual merit alone, is the criterion for man's advancement whether political or economic.

Finally, in countries inhabited by several different races, it has been our aim to find the means by which the community can become more of a community, and fellowship can be fostered between its various parts." This problem was not confined to Africa, nor was it always the problem of the European minority. Malaya was an example of the country where two peoples had to learn to live together in harmony and unity and where the strength of the nation would depend on the different contributions which the two races could make.

The attitude of the United Kingdom Government towards this problem was clearly expressed by the Foreign Secretary speaking at the United Nations General Assembly on September 17, 1959. These were his words:

> " In those territories where different races or tribes live side by side, the task is to ensure that all the people may enjoy security and freedom and the chance to contribute as individuals to the progress and wellbeing of these countries. We reject the idea of any inherent superiority of one race over another. Our policy is therefore non-racial. It offers a future in which Africans, Europeans, Asians, the people of the Pacific, and others with whom we are concerned, will all play their full part as citizens of the countries where they live and in which the feelings of race will be submerged in loyalty to the new nations."

Mr. Macmillan said that he was well aware of the peculiar nature of the problems with which the South African Government and Parliament were faced. There were in the Union some three million people of European origin. South Africa was their home and had been their home for many generations.

The problems which faced the Union Parliament were very different from those which faced the Parliaments of countries with homogeneous populations and they were complicated and baffling problems. It would be surprising if South Africans' interpretation of their duty did not sometimes produce very different results from those of the United Kingdom in terms of Government policies and actions.

"As a fellow member of the Commonwealth, it is our earnest desire to give South Africa our support and encouragement, but I hope you won't mind my saying frankly that there are some aspects of your policies which make it impossible for us to do this without being false to our own deep convictions about the political destinies of free men, to which in our own territories we are trying to give effect.

I think we ought as friends to face together—without seeking to apportion credit or blame—the fact that in the world of today this difference of outlook lies between us."

Mr. Macmillan quoted the example of the recent history of the United States of America as an illustration of the impossibility of isolationism in the modern world, and went on to stress the interdependence of all nations and especially the member states of the Commonewalth. In this connection he said, in parentheses, that he deprecated attempts which were being made in Britain today to organise a consumer boycott of South African goods. " It has never been the practice of any Government of the United Kingdom, including a Labour Government, to undertake or support campaigns of this kind designed to influence the internal policies of another Commonwealth country."

Mr. Macmillan referred to the flexibility of Commonwealth institutions as giving them their strength. He had spoken frankly about the differences between the two countries and their approach to one of the great current problems with which each had had to deal within its own sphere of responsibility. These differences were well known, they were matters of public knowledge—indeed, of public controversy—and he would have been less than honest if, by remaining silent on them, he had seemed to imply that they did not exist.

But differences on one subject, important though it was, need not and should not impair the capacity of the two countries to co-operate with one another in furthering the many practical interests which they shared in common. The independent members of the Commonwealth did not always agree on every subject. It was not a condition of their association that they should do so. On the contrary, the strength of the Commonwealth lay largely in the fact that it was a free association of independent sovereign states, each responsible for ordering its own affairs, but co-operating in the pursuit of common aims and purposes in world affairs. Moreover, these differences might be transitory. " In time, they may be resolved. Our duty is to see them in perspective against the background of our long association.

" Of this, at any rate, I am certain. Those of us who, by the grace of the electorate, are temporarily in charge of affairs in my country and in yours have no right to sweep aside on this account the friendship that exists between our two countries. For that is the legacy of history. It is not ours alone to deal with as we wish.

" We must face the differences. But let us try to see beyond them down the long vista of the future. I hope—indeed I am confident—that in another fifty years we shall look back on the differences that exist between us now as matters of historical interest."

South Africa's Prime Minister, Dr. Verwoerd, said in reply to Mr. Macmillan's speech, that he was glad that Mr. Macmillan had been frank. " We are people who are capable of listening with great pleaure to what other people have to say, even though they differ from us," he added.

" We never presume to criticise the application of other policies in areas for which you are responsible," Dr. Verwoerd continued. " But on an occasion

like this, when we can be perfectly frank, we can say we differ from you. There may be very great dangers inherent in that the very objects for which you are aiming may be defeated." The tendency in Africa was for nations to become independent, but at the same time justice had to be done to all. There must not only be justice for the black man, but also for the white man. " We call curselves Europeans but we represent the white man in Africa." They were the people who brought civilisation here and who have made the present development of black nationalism possible. They had brought education and ideals which Western civilisation had developed for itself.

Dr. Verwoerd said that they could understand Mr. Macmillan's outlook on the picture of the world and of Africa's place in that world. " I do not find fault with the major objects you have in mind," he said. South Africa had the same objects—peace—" to which you have made a very considerable contribution for which I also wish to thank you today," and the survival of Western ideas of civilisation. " You have thrown your weight on the side of the Western Nations—we are with you there."

The question was how could Africa be developed to the greatest value to the West? How could Africa be won? " There we do not see eye to eye very often." What South Africa was trying to do was not strange to the new development in Africa, but was in the fullest accord with it. South Africans saw themselves as part of the Western world—"A true white state in Southern Africa with a possibility of granting a full future to the black man in our midst. . . . If there is to be a division in future how can South Africa best play its part, both to co-operate with Western nations of the world, and at the same time make friends with the Bantu states of Africa in such a way that we will strengthen the arm of those who fight for the civilisation in which we believe ?

" We thank you for coming to see us as it shows you wish to be our friend just as we wish to be yours. It also shows that between us and Great Britain there exists now and there will exist in the future the best co-operation in many matters in which we can co-operate." Mr. Macmillan had mentioned economic relations between Britain and South Africa. These were very strong and South Africa would be the last to try to diminish them. " We wish to increase our prosperity and yours. . . . There we have something in which we are equally interested—the prosperity of South Africa, of Great Britain and of Africa. I pledge myself and the Government to the fullest co-operation in seeking that prosperity for all.

" If our ways are different," Dr. Verwoerd said in conclusion, " let us try to understand one another and in that light to find in the world a large and sincere basis for true understanding. I thank you for your presence in South Africa. I bid you, on behalf of the Parliament of South Africa God speed on your return, and may you find in Great Britain fewer problems to deal with than we, unfortunately, have here." (Commonwealth Survey, C.O.I., February 16, 1960.)

Riots

The Government were questioned on several occasions (620 H.C. Deb. 239–241, March 22, 1960; 648–653, March 24; 222 H.L. Deb. 145–146, March 23).

Security Council

Questions were asked in Parliament and Ministerial statements made on several occasions concerning the attitude adopted by the United Kingdom delegate to the South African situation at the Security Council (620 H.C. Deb. 953–957, March 28, 1960; 1143–1145, March 29, 1960; 1329–1335, March 30, 1960; 222 H.L. Deb. 493–497, March 30, 1960).

Status

The South African Prime Minister, Dr. Verwoerd, announced to Parliament on January 20, 1960, that he would introduce legislation this session which

would enable the Union's present electoral system to be used for a referendum on whether the country should become a republic. The plebiscite would not be held before May 31—the culminating day of the celebrations of the Union's fiftieth anniversary—but it must not be assumed from this assurance that it would be held later this year, or even in 1961 or 1962. The time of the referendum would, however, be announced well in advance, so that the electorate would have ample opportunity to prepare themselves for the decision.

Dr. Verwoerd said that the referendum would be confined to the white voters of South Africa, and that the decision would be taken on a bare majority. South-West Africa, which was not a province of the Union, would not participate in the voting. But existing relations between the territory and South Africa would remain unchanged irrespective of whether the Union was a republic or not. Whatever happened, South Africa would not abandon South-West Africa.

When the referendum was organised, there would be no personalities or political parties involved. He would not expect Nationalists, who did not believe in the desirability of a republic, to vote for one, and he hoped the Opposition groups would take up the same attitude.

Referring to the question of whether the republic should be inside or outside the Commonwealth, Dr. Verwoerd said that was a matter to be decided in the light of circumstances prevailing at the time. Before the referendum was held, however, the Government would announce publicly whether it was its intention to remain a member of the Commonwealth or not.

Dr. Verwoerd went on to say that the head of state and the Prime Minister would not be the same person. One of the main functions of the President, as head of state, would be to act as a "binding agency," drawing together all sections of the people regardless of political differences. In South Africa, no person could fulfil this unifying function and simultaneously carry out the duties of Prime Minister. The President must stand outside the party arena.

He said he had been asked: Why, therefore, not retain the monarchy? The answer was that the monarch was a member of the Royal Family of another country. He did not want to minimise the change by saying the President would simply take the place of the monarch. It would be more than that, but it was premature to say how the President would be chosen. The President might be chosen by the Government or by various forms of electoral college.

Speaking in the debate in Parliament on January 21, 1960, the Minister of Finance, Dr. T. E. Dönges, said there could be no more suitable time for a referendum on whether South Africa should become a republic than soon after the Union's fiftieth anniversary celebrations. It was time, he said, that uncertainty about the country's future was settled.

Dr. Dönges said he would make four points: (1) The South African republic would be a Christian republic; (2) it would be a democratic republic; (3) it would have a parliamentary system of government; (4) it would be based on equal rights between the English- and Afrikaans-speaking sections of the population.

Tanganyika

Additional Instructions

The Tanganyika Additional Instructions, 1960, dated February 8, 1960, amend the Tanganyika Royal Instructions, 1959.

Constitution

An Order has been made amending the provisions of the Tanganyika (Legislative Council) Order in Council, 1926, as amended, relating to the composition of the Legislative Council with effect for the next dissolution of the Council, and permitting preparations to be made for elections to the new Council (S.I. 1960 No. 206).

Uganda

An outline of the United Kingdom Government's proposals for constitutional advance in Uganda, in the light of the Wild Committee's report was given by the Governor of Uganda, Sir Frederick Crawford, in his address to the Uganda Legislative Council on February 22, 1960.

After congratulating the committee on the thoroughness with which it had tackled "its important and difficult task," the Governor went on to say that he had discussed with the United Kingdom Secretary of State for the Colonies certain main matters of principle embodied in the report. What he now had to say was said with the full authority of the Secretary of State.

The following are the relevant extracts from his speech.

"First, I reaffirm that it is Her Majesty's Government's resolve to lead Uganda by appropriate stages to full self-government, and to this end to develop democratic institutions of government which will properly reflect the particular circumstances and meet the needs of Uganda. Secondly, Her Majesty's Government accept that the legislature of Uganda should be predominantly elected, that is, that it should have an elected majority. Thirdly, that elections to this legislature should be on a common roll, with a further extension of the franchise and without, for the reasons stated in the Constitutional Committee's report, any special electoral safeguards for minorities. Fourthly, that direct elections should be held throughout the whole of the Protectorate, on the common roll basis to which I have already referred, as early as can be arranged in 1961. Finally, that there shall be in the executive, at present called the Executive Council, a majority of non-official ministers; and that of these non-officials the Governor will seek to appoint as many as possible, having regard to the circumstances obtaining after the next direct elections, from the elected members of the Legislative Council.

In the present circumstances of Uganda, Her Majesty's Government is of the view that, for the time being, the Executive Council, or whatever similar body there may be in the future, should continue to be presided over by, and advisory to, the Governor, and that the appointment of a Chief Minister would be premature. Nevertheless, the change in the balance of the executive will afford greater opportunities than have hitherto been available for the exercise by non-official ministers of real responsibility, and so provide valuable and necessary experience for more far-reaching changes later on.

I have confined myself to major matters of principle on which Her Majesty's Government have reached firm decisions; and I thought it right to announce these decisions at this juncture so that they might provide general guidance to hon. members when they come to debate the many matters dealt with by the Constitutional Committee in their report. The Chief Secretary will during the debate endeavour, so far as he is able at this stage, to deal with the points raised by hon. members. There are, however, some other matters both of detail and principle in the report to which Her Majesty's Government will wish to give further consideration, and I have no doubt that in doing so they will have regard to the views expressed during the debate. Their final and comprehensive views on the matters raised in the report will be communicated later.

What I have already said will, I am sure, indicate to hon. members that the constitutional changes that will be introduced represent a further and major step forward in Uganda's progress towards self-government. The time is, therefore, not far off when a careful study must be made of the form of government that would be appropriate for a self-governing Uganda. In this connection, Her Majesty's Government reaffirm their previous declaration which I made with the Secretary of State's authority on November 17, 1958, regarding the preservation and upholding of the status and dignity of the hereditary rulers. With this declaration in mind, and having regard also to the need to consider the whole question of the relationships of the various parts of Uganda with the centre, Her Majesty's Government contemplates the setting up of a

commission to study these important problems. Her Majesty's Government have not yet reached a final view on the form and scope of the proposed inquiry, but hope to make an announcement about this later in the year when I have been able to advise them on the subject after such local consultation as is appropriate.

I feel certain that this indication of Her Majesty's Government's intention to examine the problems surrounding Uganda's future constitutional development and form of government will commend itself to all in this country as evidence of their resolve to lay the foundations in Uganda for a form of parliamentary and democratic government that will preserve what is best in the existing traditional institutions of this country and at the same time bring the country forward in peace and prosperity to independent status within the Commonwealth and offer it the best prospects for the future." (Commonwealth Survey, C.O.I. March 1, 1960; see also 619 H.C. Deb. 618–619, March 10, 1960.)

Virgin Islands

Royal Instructions

The Virgin Islands Royal Instructions, dated December 21, 1959, came into operation on January 1, 1960. They provide for leave of absence for the Administrator, the forwarding of Ordinances, and reserved Bills, the publication of Ordinances, the disposition of public land, the power of pardon in capital cases, and the administration of the oath of allegiance.

West Indies

Cabinet government

In a telegram sent to the Governor-General of the West Indies on January 12, the Secretary of State for the Colonies, Mr. Iain Macleod, agreed that Cabinet government should be introduced in the Federation at an early date, subject to the concurrence of the unit governments and agreement on details, but said that it would be improper for him to agree to any date for independence before the constitutional conference held in Trinidad in 1959 reconvened to settle outstanding problems which were now being considered by committees. Mr. Macleod made it clear that any difference between Federal ministers and himself was one of timing and not of principle. His telegram was in reply to a dispatch from the Governor-General which forwarded a resolution of the Federal House of Representatives in December 1959, calling for the introduction of Cabinet government and the fixing of a date for the inauguration of Dominion status in the West Indies as early as possible in 1960. The following is taken from the telegram, which the Federal Government released on the authority of the Secretary of State.

"Let me say at once that there is no difference between any of us as to the objective, which is that the Federation should become an independent member of the Commonwealth as soon as possible. As a stage on this road I fully agree, therefore, that, subject to the concurrence of the unit governments and agreement on details of the proposal, Cabinet government should be introduced at an early date.

I look forward to an early visit by the Federal ministers to discuss the practical implications of this step. The introduction of independence is, however, a different matter."

After pointing out that the Trinidad conference disclosed considerable differences of opinion between leaders of the Federation regarding the next stage of federal development, Mr. Macleod said he understood that the work of the intergovernmental committees and their associated working parties, which had since been engaged in examining these problems, had been going well, and that he was confident that, when the conference reconvened, it would be possible for leaders of the West Indies to reach an agreement on all outstanding issues so that speedy progress could be made to independence.

" It would however," the telegram continues, " be improper for me to agree to any date for independence in advance of this conference, and until there has been a full discussion between representatives of all governments in the Federation.

I would of course also wish to invite representatives of all these governments to London for a full-dress constitutional conference to determine the final shape of constitution after independence. For these reasons I greatly regret that I cannot see my way to agreeing at this point to the second part of the resolution." (Commonwealth Survey, C.O.I. March 1, 1960.)

Constitution

The Constitution of the West Indies (Amendment) Order in Council, 1959, dated December 21, 1959, came into operation on January 1, 1960. It amends article 116 and the First Schedule to the Constitution.

Windward and Leeward Islands

Courts

The Windward and Leeward Islands (Courts) Order in Council, 1959, revokes the Leeward Islands and Windward Islands (Courts) Order in Council, 1939, and makes fresh provision with respect to the Supreme Court and the Court of Appeal of those Islands. It also establishes a Judicial and Legal Service Commission for those Islands and includes certain provisions regarding magistrates' courts and the members thereof (S.I. 1959 No. 2197).

Emergency Powers

The Leeward Islands (Emergency Powers) Order in Council, 1959, revokes the Leeward Islands (Emergency Powers) Order in Council, 1958 (which conferred power to make emergency laws for the colonies of the Leeward Islands on the Governor of the Leeward Islands) and confers on the Administrator of each of those colonies power to make emergency laws for his colony (S.I. 1959 No. 2206).

Police Service Commission

The Windward and Leeward Islands (Police Service Commission) Order in Council, 1959, provides for the establishment of a Police Service Commission for Antigua, Dominica, Grenada, Montserrat, Saint Christopher Nevis and Anguilla, Saint Lucia and Saint Vincent (S.I. 1959 No. 2198).

PUBLIC LAW

Autumn, 1960

Comment

The question of the control of the police has, in these last two or three years, received rather more publicity than is usual. The Select Committee on Estimates has examined the police service for the first time. In the debate on the opening of the 1958–59 session of Parliament, Viscount Alexander of Hillsborough urged the Government to hold an inquiry "into every part of the police administration." Both Houses of Parliament have recently staged debates. There have been what the Prime Minister would perhaps call "little local difficulties" in Cardiganshire and in Sussex and elsewhere. And now we have a Royal Commission.

The size of the police forces varies very greatly—from that of the Metropolitan Police with nearly 20,000 and Lancashire with nearly 3,000 to Dewsbury and Wakefield with less than 100 and some 60 forces with less than 250. Actual numbers may be considerably below authorised establishment. In March 1957, the establishment for Liverpool was 2,018 but the actual strength 475 less; Oxfordshire was 13 short of its establishment of 251. Blackpool is considerably under-policed, having, in 1958, 207 against an establishment of 226. The Chief Constable of Eastbourne, on the other hand, told the Select Committe on Estimates that he had no difficulty in recruiting. In 1956 the authorised establishment for Blackpool was equal to one policeman to every 663 inhabitants; for Eastbourne, one to 455 inhabitants; for Manchester, one to 457; for Sunderland the figure was one for every 734. At the same time, the national figures show that we are being more and more policed. A hundred years ago there was one police officer to every 1,000 inhabitants. Today there is one for every 570 persons. If this period is thought unrealistically long—in 1938 the authorised establishment provided for one police officer for every 650 persons; in 1955 it was one for every 590 persons.

The relationship of the size of any organisation to its efficiency is notoriously difficult to assess. No doubt every body has a maximum size beyond which it becomes less efficient and equally a

minimum size below which it should not be allowed to fall. But there are so many other more personal considerations that little of value can be deduced from mere figures. It has long been felt that certain police forces were too small. At the beginning of the nineteenth century the police system was based on the parish constable, supported in the towns by the watchmen and supplemented in London by a small body of constables and by the Bow Street patrols for which the Home Secretary was responsible. In 1829 the Metropolitan Police were set up. In 1835 the Municipal Corporations Act required the council of each of the 178 boroughs to appoint a watch committee, while the County Police Act of 1839 empowered the justices in the counties to establish police forces—a function which passed to standing joint committees in 1888. Before the operation of the Police Act of 1946 there were fifty-eight county forces, 120 borough forces and the Metropolitan Police, a total of 179 which has now by the abolition of non-county borough forces and by voluntary and compulsory amalgamations been reduced to 125. The Select Committee on Estimates thought that there had not been enough amalgamations under the 1946 Act and suggested, for example, that Oxfordshire and the City of Oxford might combine to form a force of about 400 men. Rather surprisingly, the Committee thought that there was much to be said for this on financial grounds. The evidence that was given seemed to suggest that amalgamation between boroughs and counties might well mean an increase in the cost of the borough service, county forces being of their nature—the area to be covered, the numerous police stations, buildings, garages and so on—much more expensive than borough forces. The Home Secretary subsequently said that it had never been envisaged that amalgamations were likely to produce substantial financial savings and that an analysis of police expenditure since 1946 did not suggest that any amalgamation since that date had produced a significant change in the pattern of expenditure in the forces concerned.

The parish or petty constable was appointed by the justices of the peace in quarter sessions assembled. Today the basic powers of the police are those appertaining by common law and old statutes to the office of constable. All policemen of whatever rank are sworn to serve the Crown in the office of constable and have all the powers, privileges and duties which any constable duly appointed has at common law or by statute. The most important general duties are to preserve the Queen's Peace, to keep watch and ward, to bring criminals to justice, and to protect life and property. When carrying out his duties a constable acts as an officer of the Crown and a public servant.

The Courts of Law have emphasised this constitutional position many times. In *Coomber* v. *the Justices of Berkshire*, in 1883, Lord Blackburn said: "I do not think it can be disputed that the administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, nor that by the constitution of this country these functions do, of common right, belong to the Crown." Lord Watson said: "Seeing that, in my opinion, the administration of justice, the maintenance of order, and the repression of crime, are among the primary and inalienable functions of a constitutional Government, I have no hesitation in holding that assize courts and police stations have been erected for proper government purposes and uses, although the duty of providing and maintaining them has been cast upon county or other local authorities."

In *Fisher* v. *Oldham Corporation* in 1930, McCardie J. said "Suppose that a police officer arrested a man for a serious felony? Suppose, too, that the watch committee of the borough at once passed a resolution directing that the felon should be released? Of what value would such a resolution be? Not only would it be the plain duty of the police officer to disregard the resolution, but it would also be the duty of the chief constable to consider whether an information should not at once be laid against the members of the watch committee for a conspiracy to obstruct the course of criminal justice." He concluded: "I hold that the defendants are not responsible in law for the arrest or detention of the plaintiff. The police, in effecting that arrest and detention, were not acting as the servants or agents of the defendants. They were fulfilling their duties as public servants and officers of the Crown sworn to 'preserve the peace by day and by night, to prevent robberies and other felonies and misdemeanours and to apprehend offenders against the peace.' If the local authorities are to be liable in such a case as this for the acts of the police with respect to felons and misdemeanours, then it would indeed be a serious matter and it would entitle them to demand that they ought to secure a full measure of control over the arrest and prosecution of all offenders. To give any such control would, in my view, involve a grave and most dangerous constitutional change."

The decision in *Fisher* v. *Oldham* was based on the idea that the local authority had insufficient control to make that authority liable. But it would appear that it has sufficient control to exclude the doctrine of Ministerial responsibility in Parliament. A Member of the House of Commons recently sought to have debated the control of local police forces and of chief constables. But Mr. Speaker

ruled him out of order on the ground that the Home Secretary, though he had particular powers, had no general responsibility. This does not mean that the House of Commons can in no circumstances debate the police. But it does mean that some such special tag is necessary on which to hang a motion. The Metropolitan Police are, of course, in a quite different position. Because of the Home Secretary's direct responsibilities, all manner of debates and Parliamentary Questions are proper and common. Thus, for example, on January 20, 1959, the House debated on the adjournment the matter of the police arrangements for the Orpington district and the Member for Orpington questioned whether the best possible arrangements had been made and suggested how they might be improved.

We have also to consider, in this matter of constitutional status, how far the nature of the police function transcends local administration. We may speak of the desirability of standards in education being uniform throughout the country but it is at least arguable that the uniformity of police standards is in a different category; that the standard of law enforcement is the Queen's Peace and that this is necessarily and historically a national concern. This argument can, of course, be taken two ways. It could lead, on the one hand, to saying that police forces should be independent of local councils and so be an argument for the retention of much of the present system so far as law enforcement is concerned. But, on the other hand, it could lead to an argument in favour of greater centralisation.

It seems quite clear that H.M. Inspectors—who are ex-chief constables—carry out their traditional duties intelligently and well. But the question does remain whether those traditional duties are the duties they ought to be performing. Earl Winterton said in the Lords debate that the Government spokesman—Lord Chesham—did not convince him and added: "I am in complete doubt about what the inspectors are for. He (Lord Chesham) said that they were there to see that the Brighton police were efficient. Surely it is not efficient to be corrupt. I do not understand what they are there for, if they do not find out what is going on in the police force." In the Commons debate, the Under-Secretary of State (Mr. Renton) agreed that the function of the Inspectorate was to inquire into efficiency, to see whether the force was efficient enough to earn the 50 per cent. grant. But, he added: "I do not think that it could be said that they have the further task of groping about and trying to discover latent corruption on those rare occasions when it may exist." Against this may be set the answer of an Inspector to a question of the Estimates Committee on what criteria

he applied to determine whether a force was efficient. He said: "One's technique of inspection is aiming first at getting an impression of the integrity and complete honesty of the general body of the Force, all ranks from top to bottom, and to ensure that the constables recently appointed are up to standard."

These statements do not all stand easily together. But the nature and extent of the duties of the Inspectorate must flow from their number and their character. One man, however experienced, who visits a force two or three or four times a year, cannot expect to do more than gain an impression of the general efficiency of a force. He may get to know the chief constable well and will assess his quality. But the inspection is not intensive or continuous. The function of the present Inspectorate is essentially limited. Suggestions have recently been made that it should be strengthened. The Estimates Committee wanted a chief inspector for co-ordination so as to establish commonly applicable criteria of efficiency and to ensure that the best use was made by all forces of the most efficient and economic methods of administration and policing. The Government rejected this recommendation because in their view the inspectors were in close touch with each other and with the Home Office. Even if a chief inspector were appointed and even if the number of inspectors were doubled or trebled, this would not alter essentially the limited number of functions which the Inspectorate can perform.

Earl Winterton in the Lords debate spoke of two schools of opinion on the relationship between chief constables and police committees. One school of opinion said that the chief constable had too much power—no one could tell him to prosecute a person, no one could stop him from prosecuting perhaps under some old or obsolete statute. The other school said that committees, particularly watch committees, had too much power, that some had a "semblance of political views on the duties of the police" and that political patronage could creep into promotions; that if a chief constable did not work with his committee, the committee could make it difficult for him by withholding money he needed. Clearly there are always possibilities of conflict between police committees and chief constables. So there are between education committees and education officers. But the independence of the chief constable in law which flows from his duties and his powers makes the conflict more real, though not necessarily more likely. In the last resort, in argument, the education officer must give way to his committee. But it may be the legal duty of the chief constable not to give way to his committee.

In this matter of control, standing joint committees are in a

weaker position than watch committees. For many years there has been a movement in county council circles for an amendment. Sometimes this has been directed against the power of chief constables. The preamble to the Police (County Authorities) Bill of 1908 read: "Whereas in order that the chief officer shall not supersede the police authority, it is expedient that the same powers which are now legally exercised by watch committees in boroughs for the appointment, control, punishments, reward and dismissal of constables should also be conferred upon standing joint committees," and clause 1 provided that all powers conferred upon the chief constable of a county should be subject to the approval of the police authority of such county, and every chief constable should report from time to time as he might be required to the said authority. More often the movement has been generally directed to the assimilation of the control of the county police with that of the borough police. The County Police (England and Wales) Bill of 1914 would have transferred the functions of the standing joint committee to the county council, would have given to the county council the powers possessed by the watch committee relating to the appointment and control of the chief constable, would have required the appointment of a police committee of the council (consisting of members of the council) to which all matters of police would have stood referred; finance was to be left with the county council.

Should counties press for the greater degree of control which boroughs enjoy in the matter of the appointment and promotion of constables? On the one hand, it is dangerous that any one man, however excellent, conscientious and honest, should have the power to appoint and, more importantly, to promote all those beneath him without being answerable to someone. On the other hand, any practice whereby councillors are empowered to decide promotions by reference to paper records, interview, and their personal knowledge of constables, is alarming.

The proper mixture of law and practice is that followed in the great majority of cases in the boroughs: this is, that the committee promotes on the recommendation of the chief constable, which recommendation they would depart from only in the most exceptional circumstances. The power of the committee ought to be limited to a refusal to accept the chief constable's recommendation on promotion and to require him to think again. No committee should ever have the power to promote or to take any disciplinary action against a constable without the chief constable's approval.

Behind these matters lies a deeper question. "How," asked Earl Winterton in the Lords debate, "whilst retaining the proper authority and autonomy of provincial police authorities . . . can

the public be given more rights than they have at the moment to query the action of those authorities? " He put forward the suggestion of Police Authority Councils, composed of representatives of police committees and independent members such as Q.C.s, to hear complaints by chief constables of interference by police committees, to hear complaints by police committees of the failure of chief constables to carry out their duties properly, to hear complaints by members of the public against police forces and to hear complaints by police constables of unfair treatment. There is a definite and growing need in many fields of public administration for some independent body to hear and investigate complaints of maladministration. Cases like Crichel Down and the recent Waters inquiry on the police action against the boy in Scotland have to be dealt with by various types of committees or tribunals which are not particularly satisfactory. And, more importantly, it is necessary to persuade the Government Departments or local authorities concerned that the case calls for investigation. In other words, the accused has to submit voluntarily to judgment. Self-criticism is not an easily acquired virtue.

It would be possible to follow the pattern of the Metropolitan Police and subordinate provincial police forces to the administration of the Home Office so that parliamentary control could operate as it does for Government Departments and the Metropolitan Police. The Desborough Committee in 1919 considered this notion of what they called nationalisation and rejected it. " The adoption," they said, " of direct central control of the police would be foreign to the constitutional principle . . . by which the preservation of law and order in this country is primarily the function of the proper local authorities . . . it would alter the whole basis of the police system, and in particular would prejudice the intimate relations between the police and the localities which they serve which many experienced witnesses have regarded as one of the most desirable characteristics of the present system and to which they attribute in great measure the happy relations which have existed between the police and the general public in this country." Others have stressed the political dangers of putting the police power into the hands of one authority.

We are left with the question whether there are any positive reforms that can be made to make the chief constable and, through him, the other members of the force, more answerable to police committees or other bodies. Do we want local councillors, aldermen and justices to be able to take to task the action or inaction of chief constables and other members of the force? Normally (in the absence of corruption and like offences) the chief constable must

continue to be fixed with responsibility; other individual constables must be regarded as directly subordinate to him and not to police committees. The chief constable should retain the power of taking decisions, as he does today, for law enforcement, for the discipline and administration of the force. Subject to the right of a police committee to refuse to accept a recommendation of the chief constable and to ask him to think again, the greater powers of the chief constable in county forces are more desirable than his lesser powers in boroughs. But, on the other hand, he should be made responsible for his actions, and those of his constables. He should be called on to justify those actions to the police committees. In other words, police committees should have the right and the duty to criticise, to suggest and to comment—over the whole field of actions of the police force—but not to instruct, nor to direct, nor to give orders. The powers of the chief constable could be left as they are in the county forces. But, as in other parts of public administration, the corollary to power should be answerability. And the answerability should extend not only to his own actions but also to those of all members of the force. In this sense, he would be placed in a position like that of a Minister of the Crown answering for his Department, with the right, as the Minister has, to refuse to answer in exceptional circumstances. And the police committee, in this matter of law enforcement, would be placed in the position of the House of Commons.

As so often happens in our constitution, the responsibility for taking executive action should not be that of the elected representatives; their function, in this matter of law enforcement particularly, should be to call for explanations. Constables must be entrusted with the power to exercise their traditional function which is to keep the Queen's Peace. The elected representatives are there not to do it for them, nor to tell them how to do it, but to ask how it is that they have done it in a particular way.

The Constitution of Ghana

On July 1, 1960, Ghana became the third republican member of the Commonwealth. In the Summer number of this journal some comments were offered on its draft Constitution.[1] The Constitution that was finally enacted by the Constituent Assembly embodied a number of amendments to the original draft. Five of these changes are worthy of special notice.

First, the provisions relating to the allocation of legislative power

[1] [1960] P.L. 134–138.

and the machinery for constitutional amendment have been reconstructed by the deletion of article 3 and the enlargement of article 20, and most of the questions raised by the earlier draft have been answered. Parliament's legislative power is to be unlimited except in so far as part of the legislative power of the state is reserved by the Constitution to the people. But Parliament, in exercising its powers to alter the Constitution, can do so only by an Act expressed to be an Act to amend the Constitution and containing only provisions effecting the alteration thereof; a constitutional amendment cannot, therefore, be effected merely by the enactment of legislation that is inconsistent with an existing provision of the Constitution. Parliament is expressly precluded from divesting itself of any of its legislative powers except (i) in accordance with article 2 (which empowers it to relinquish Ghana's sovereignty to a union of African states and territories) and (ii) to the people by a constitutional amendment. Powers that are or will be reserved to the people may be conferred on Parliament by the people voting at a referendum; the question whether the powers have been validly conferred on Parliament will be conclusively determined by a certificate given by the Speaker.

Secondly, the much-criticised article 35, which empowers the President to grant loans out of any public fund or account, has been modified to enable the Assembly to require such agreements to be submitted to them for ratification before becoming operative.

Thirdly, the Chief Justice of Ghana has been designated as Head of the Judicial Service and is to be removable by the President in his discretion without cause shown or a parliamentary address (art. 44). Whether analogies with the status of the Lord Chancellor are apt is a matter on which opinions will doubtless differ.

Fourthly, article 42 (2) now gives the Supreme Court exclusive original jurisdiction in any matter where the constitutional validity of an Act of Parliament is called into question.

Fifthly, as a result of an amendment made at the Committee stage of the debates on the Constitution Bill,[2] a new article 55 is added, giving the first President of Ghana power, during his initial period of office, to "give directions by legislative instrument" whenever he considers it in the national interest to do so. Such an instrument may alter any enactment other than the Constitution itself. The only limits to the legislative powers thus conferred appear to be those implicit in the provisions of the Constitution which require that authority for certain acts (*e.g.*, the imposition of a tax, the granting of a loan, the raising of an armed force) be derived from an Act of Parliament. The need for the new article is not altogether clear; the

[2] See 19 Parliamentary Debates 360 *et seq.* (June 24, 1960).

Government already has extensive emergency powers vested in it by ordinary legislation. Its introduction serves to strengthen the Gaullist flavour of the constitutional provisions relating to the Presidency.

Lastly, it should be pointed out that a complete view of the new constitutional régime in Ghana cannot be obtained unless one also reads the various Acts of Parliament that have recently been passed to complement the terms of the Constitution. Among these statutes perhaps the most interesting is the Representation of the People (Women Members) Act, 1960,[3] which allots ten additional seats in the National Assembly to women. Mrs. Pankhurst would have rejoiced.

S. A. DE SMITH.

Excise Taxing Powers in Australia

The twin cases *Dennis Hotels Pty., Ltd.* v. *Victoria* and *Whitehouse* v. *Queensland*,[4] interpret the expression "duties of excise," which by section 90 of the Commonwealth Constitution can be imposed only by the Federal Parliament. The cases concerned the validity of fees required to be paid in all Australian states, under state law, for annual licences to sell alcoholic liquor, the fees being fixed as a percentage of the value of liquor purchased by the dealer in a trading year ending on June 1 before the licence comes up for renewal. The question is of great importance to the states, partly because the licence is a factor in the general control of the liquor trade which falls exclusively under state power, and partly because the taxation so imposed constitutes an important proportion of the few sources of revenue still left to the state parliaments.

In the result, the High Court was very closely divided. Fullagar, Kitto, Taylor and Menzies JJ. held that the main fees in question did not amount to duties of excise and so were validly imposed; Dixon C.J., McTiernan and Windeyer JJ. dissented. But the Victorian case also involved a subsidiary question as to the fees payable in respect of a particular kind of temporary licence; as to that Menzies J. joined the dissentients on the main issue in holding that the elements of an excise were present, against the dissent of Fullagar, Kitto and Taylor JJ., so producing a majority for invalidation of the temporary licence fee.

The principal ground of difference between majority and minority on the main issue of the ordinary victualler's licence is not easy to state with confidence, because there are two important elements involved and of the four separate opinions constituting the majority each

[3] No. 8 of 1960. The seats are distributed on a regional basis. Candidates are nominated and elected by the members of the National Assembly for the respective regions; the voting is by secret ballot. Women are, of course, also eligible for election to the other seats in the Assembly.

[4] (1959–60) 33 A.L.J.R. 470, 501 (H.C. of Australia).

gave rather different emphasis to these elements. The first element was that the fee paid was not " in respect of " either the production or the sale of goods, but was in respect of the grant of a licence to carry on an otherwise prohibited business, this privilege having also a monopoly value. The second element related to the detailed operation of the licensing legislation; under its terms, a particular person carrying on the licensed business might elect not to apply for renewal of the licence when it fell due, or he might transfer the licence to another person and would then never himself become liable to pay the renewal fee. In the one case, no fee would ever become payable and therefore liquor purchased in the relevant period in respect of those particular premises would never have " borne " a tax, while in the other case the person who renewed and paid the fee might not himself ever have purchased or handled some or any of the goods by reference to which the fee was calculated. Probably it was the second rather than the first element which played the greatest part in the majority decision. The " swinging vote " on the subsidiary Victorian question might be regarded as settling this issue, since the temporary licence fee held invalid was equally the payment for a privilege, but in the view of Menzies J. was nevertheless an excise because in this case the person who paid the fee was necessarily the person who purchased the liquor in question, and the fee necessarily became payable.

The dissentients on the main issue thought the detailed provisions of the taxing machinery unimportant, because in general, licences would be renewed, and the " fee " for renewal would operate in a vast majority of cases as a percentage addition to the cost of liquor handled by the licensees.

The definition of " excise " now has a long history in the High Court; the question has not been before the Privy Council, and earlier views concerning the nature of an *inter se* question made it unlikely that such a case could go to London because of the obstacle of section 74 of the Constitution, but there is a theory concerning the " inter-seness " of certain types of exclusive Commonwealth power now current, under which the question might yet reach the Privy Council.[5] The possibility of taking these cases to London is at this time of writing under consideration.

In *Peterswald* v. *Bartley*,[6] the first High Court gave " excise " a narrow interpretation, applying it only to taxes levied in respect of the manufacture or production of goods by reference to their volume or value. The restriction was based partly on the language of other

[5] See Professor Derham in (1957) 4 *University of Western Australia Annual Law Review*, p. 19.
[6] (1904) 1 C.L.R. 497.

sections in the Constitution, and partly on a general assumption in favour of maximising " reserved " state powers. Subsequent decisions have tended to widen the concept of " excise " to include not only taxes in respect of production but also sales taxes, and to eliminate the necessity for a direct relationship with " volume or value." The majority decision in the instant cases is consistent with the wider concept of " excise " adopted in such cases as *Parton* v. *Milk Board*,[7] but the opinions have this further interest that in three of them there is some criticism of the wider concept, in whose creation Dixon C.J. (when Dixon J.) took a considerable part. Fullagar and Menzies JJ., on an independent reconsideration of section 90 of the Constitution, reached the conclusion that the *Peterswald* v. *Bartley* definition was correct; this writer has elsewhere [8] expressed the view that in any event it would have been better to adhere to that definition. Menzies J., however, regarded himself as bound by the later decisions to accept some widening, whereas Fullagar J. is apparently prepared to distinguish or perhaps even overrule some of the later decisions. Taylor J. was also clearly anxious to restrict the widening tendency although probably like Menzies J. would accept in some part the consequences of the later decisions. Only Kitto J. of the majority accepted the widening decisions without question, though regarding them as not decisive in the present case. There is still a distinct majority of the court which accepts in full the extension of the concept of excise to sales taxes, and possibly to most " indirect " taxes, but it is a situation very much at the mercy of future appointments to the bench. The court was also much divided about the comparative application of Canadian decisions on the nature of an " indirect " tax.

From the point of view of interpretative technique, the majority view on the main issue rests on a somewhat formal distinction concerning the *legal* operation of the tax, while the dissentients emphasise the substantial *economic* operation of the tax. It is indeed ironical to find the Chief Justice, long regarded as a leading formalist, here among a minority looking to social substance; but such a division has also been becoming evident on other questions of interpretation, notably the consistency of taxation of interstate commerce with section 92. However, membership of these groups is by no means constant and Fullagar J. in particular usually takes an independent line.

GEOFFREY SAWER.

The Justice Educational and Research Trust has appointed a small Committee, under the chairmanship of the Rt. Hon. Lord Shawcross,

[7] (1949) 80 C.L.R. 229.
[8] *Australian Constitutional Cases*, 2nd ed. p. 346.

P.C., to inquire into the means for investigating complaints of misuse of power by the Executive. The Committee will concern itself with administrative acts or decisions of Government Departments and other public bodies, where there is no tribunal or other statutory procedure available for dealing with the complaints; and in particular it will consider the Scandinavian institution known as the Ombudsman.

If any readers of this Journal wish to assist the Committee with evidence or suggestions, they should send a brief statement of their views to the Justice Educational and Research Trust, 1 Mitre Court Buildings, Temple, London, E.C.4.

PUBLIC EMPLOYMENT—AN AUSTRALIAN CONTRAST

LEO BLAIR

DESPITE its common law background and parliamentary political system the law relating to public employment—particularly Crown employment—in Australia has developed in a fashion markedly different from the way in which it has evolved in the United Kingdom. On the whole, government employment has been subjected to much the same considerations as private employment and the Australian public servant has important rights that are guaranteed and enforceable at law. Almost every aspect of the employer-employee relationship is minutely regulated by statutes and regulations made thereunder and most of these legal provisions have, at some time, given rise to litigation.

While there are some variations in the public service legislation of the different states and of the Commonwealth, they follow mainly the same pattern. This is true also of local government legislation and of the statutes governing the wide variety of quasi-governmental bodies that exist in Australia.[1] Typical of the general pattern is the Commonwealth Public Service Act, 1922–59, which, together with a number of other statutes,[2] governs the conditions of service of federal public servants.[3]

This statute provides for the composition and administration (by a Public Service Board) of the service [4] and deals in great detail with, *inter alia*, the creation and abolition of offices, salaries, promotions and transfers, offences, leave of absence, transfers of employees between the Commonwealth service and state public service, as well as certain statutory authorities, temporary employment and returned soldiers.

* The author is Lecturer in Law, Durham Colleges, University of Durham.

1 *Cf.*, *e.g.*, ss. 158–163 of the Victorian Local Government Act, 1946, and ss. 88–95 of the New South Wales Local Government Act, 1919–43.

2 Superannuation Act, 1922–50; Commonwealth Employees' Compensation Act, 1930–50; Commonwealth Employees' Furlough Act, 1943–44; Officers' Rights Declaration Act, 1928–40; Audit Act, 1901–50; Public Service Arbitration Act, 1920–50; Crimes Act, 1914–50.

3 By s. 8 the Act is stated not to apply to: any Justice of the High Court of Australia; the High Commissioner; the Auditor-General; the Public Service Arbitrator; the Commonwealth Railways Commission or any employee under the Commonwealth Railways Act, 1917; any person employed in an honorary capacity; any officer the right to appoint whom is not vested in the Governor-General or the Board; any person remunerated by fees, allowances or commissions only; or any person employed in the Naval, Military or Air Forces only.

4 ss. 1–22.

The servants' right to salary is left in no doubt. Apart from the heads of departments and a few other senior officers, all public servants under the Act, " shall be paid salaries at such rates, or in accordance with such scales of rates, as are prescribed." [5] The former officers " shall be paid such salaries as the Parliament provides." [6]

The promotion provisions of the statute stress the rights of the employee and even go so far as to lay down the criteria by which promotions shall be made.[7] Terms like " relative efficiency " and " equality of efficiency " are vague and imprecise and the amendments to which these sections of the Act have been subject are in themselves strong testimony of the influence of the employee organisations and of the importance placed on the servants' " rights." [8]

So, too, in the sections of the statute dealing with offences, guarantees of just treatment and respect for the employee's rights occupy a significant place.[9] The offences which are punishable are fully set out and the method of charging and punishing the offender is precisely described. That there must be strict adherence to the procedure laid down in the Act was proved early in the history of the service.[10]

It is, however, in the comprehensive provisions governing appeals of various kinds that the protection of the rights of governmental servants is most apparent. Any promotions made within the service are provisional only and are without increase in salary pending confirmation, which cannot be given until a right of appeal has been given to " any officer who considers that he is more entitled to promotion . . . on the ground of (a) superior efficiency or (b) equal efficiency and seniority." [11] Promotions Appeal Committees have been established which in certain cases determine the appeal and in others make a recommendation to the Board.[12] A Promotion Appeals Committee must contain a member nominated by the staff association covering the class of office concerned.

The system of Disciplinary Appeal Boards provides even more striking evidence of the desire to protect the public servants from arbitrary punishment or dismissal. For the offences specified in the Act the departmental head may impose punishments including a fine, a reduction in salary, demotion or a recommendation to the Public Service Board that he may be dismissed. Against such punishment a

5 s. 30 (2).
6 s. 30 (1).
7 s. 50 (3) (3A) (4) (4A).
8 See the Report of the Commonwealth Public Service Board, 1950, pp. 20–22, for a discussion of the conflict between " seniority " and " efficiency."
9 s. 55 (3).
10 *Williamson* v. *The Commonwealth* (1907) 5 C.L.R. 174.
11 s. 50 (6).
12 On the system of promotion appeals, see L. Blair, " Employer-Employee Relations in the Federal Public Service," *Public Administration*, Vol. XXXV, Spring 1957, p. 53 at pp. 59–61.

servant has the right of appeal to a Disciplinary Appeal Board, the chairman of which must be a magistrate, and which must include a representative of the division of the service to which the appellant belongs. The Appeal Board has power to determine the appeal in any way it sees fit except that it cannot dismiss an appellant, but may recommend dismissal to the Public Service Board.[13]

It may be observed that although no such provisions exist in the statute at present under consideration, certain Acts governing public employment provide for appeals by employees against salary classification [14] and even against transfer from one area to another.[15] These provisions give the employee powerful legal rights against the government and, as with the appeals under the Commonwealth Public Service Act mentioned above, the machinery is frequently used.[16]

Even more important, however, is the extensive system of compulsory public service arbitration which considerably limits the freedom of governments as employers.

Industrial arbitration in Australia began early and developed fast.[17] Arbitration courts and tribunals of all kinds, created under both federal and state authority, have produced a large amount of law relating to industrial employment generally and to public service conditions in particular. The decisions of these bodies, together with the multiplicity of statutes and regulations, enable certain important conclusions to be drawn, of which possibly the two most important for this study are: that governmental employment, as such, has not placed public employees outside the ordinary processes of industrial arbitration and that the concept of the state as a " sovereign " employer finds no place in Australia where the conditions of service of so many government employees are determined by bodies over which the employing government has no control whatever.

[13] s. 55 (4) (5); see Blair, *loc. cit.* pp. 61–62. Legal representation is permitted before the Appeal Board.

[14] See South Australian Local Government Act, 1936–57, which provides for a Classifications Appeals Board.

[15] *Cf.* N.S.W. Police Regulation (Appeals) Act, 1923 (as amended by subsequent statutes), s. 6 (1).

[16] In the year ended June 30, 1956, there were 10,455 provisional promotions and 12,709 applicants; of the promotions appealed against, 17·4 per cent. were successful. *Commonwealth Public Service Board Report*, 1956.

[17] The history of arbitration in Australia is an interesting commentary on the essentially empirical nature of Australian politics and law. Theories of social philosophy have not been conspicuous; but the underlying social and political assumptions which succeeded in removing most franchise restrictions before the end of the nineteenth century were no less implicit in the creation of a system of compulsory industrial arbitration. See, generally: L. F. Crisp, *The Parliamentary Government of the Commonwealth of Australia* (2nd ed., Longmans, 1954), pp. 19–21. R. J. Hawke, " The Commonwealth Arbitration Court," *Annual Law Review* (University of Western Australia), Vol. III, p. 422. On public service arbitration in particular, see E. E. Crichton, " The Development of Public Service Arbitration," *Public Administration* (Sydney), Vol. XV, pp. 150, 214 and 319; L. Blair, " Arbitration in the Federal Public Service," *Public Administration* (London), Spring 1956, p. 61.

By placitum XXXV of section 51 of the Australian Constitution the Parliament of the Commonwealth is given the power to make laws with respect to:

> " Conciliation and arbitration for the prevention of industrial disputes extending beyond the limits of any one state "

and, under this power, the Commonwealth Parliament has passed legislation which provided, *inter alia*, for the constitution of a Commonwealth Court of Conciliation and Arbitration with power to determine industrial disputes where more than one state is involved.[18]

In interpreting the word " industrial " both the High Court and the Arbitration Court have given ample illustrations of their view that government employees can be brought within the ambit of the Conciliation and Arbitration Act, and that the Crown, no less than any other employer, is subject to its provisions.

The High Court in *Federated Municipal and Shire Council Employees' Union of Australia* v. *Melbourne Corporation*[19] was of the opinion that the Crown was bound by the Arbitration Act of 1904 and that the intention to so bind the Crown had been clearly expressed in section 4 of that statute which included in the term " industrial dispute ":

> " Any dispute in relation to employment in an industry carried on by or under the control of the Commonwealth or a state, or any public authority constituted under the Commonwealth or a state." [20]

The Crown, therefore, could not claim for its disputes with its employees an immunity from the operation of the arbitration legislation unless it could show that the dispute was not " industrial." The government was not to be exempt where a private individual or company would not be and work that is industrial, if privately performed, is no less so because it may happen to be carried out by a government instrumentality.

The Sydney Harbour Trust, for example, is closely directed by the government of the State of New South Wales and subject to the

18 See Conciliation and Arbitration Act of 1904. The High Court in the *Boilermakers' Case* (1956) 94 C.L.R. 254 (affirmed by the Privy Council) decided that the Arbitration Court could not constitutionally exercise, together with its arbitral functions, the judicial power of enforcement; this made necessary amending legislation which was passed in 1957. This legislation established two new bodies —the Commonwealth Conciliation and Arbitration Commission and the Commonwealth Industrial Court—the former being given the arbitral functions proper and the latter all the judicial powers necessary to enforce awards. As these internal arrangements do not affect the law considered in this article, the term " Arbitration Court " will be used throughout.

19 (1919) 26 C.L.R. 508.

20 See, *ibid.* Higgins J. at 537–538; also *Amalgamated Society of Engineers* v. *Adelaide Steamship Co., Ltd.* (1920) 28 C.L.R. 129 at 163.

latter's financial control. Furthermore, ports and harbours are among the matters over which the monarch in former times exercised the prerogative; it was argued, therefore, that a dispute between the Trust and its servants was not, properly, an " industrial " dispute since the ordinary relationship of employer and employee does not appear to be present.

This argument was, however, rejected by the High Court in *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association [No. 2]* [21]; the prerogative was limited in extent [22] and on the basis of the decision in *Mersey Docks and Harbour Board* v. *Lucas*,[23] the court held that the Sydney Harbour Trust was essentially an industrial concern, the employees of which were within the scope of the Arbitration Act notwithstanding the governmental nature of their employer. The words " industrial dispute " did not " in their natural and ordinary meaning " exclude disputes in which one party was a state government even when it was exercising executive powers for the benefit of the public and financed by parliamentary appropriations.[24]

Acceptance of the justice and feasibility of this is implicit in the legislation governing Commonwealth public service arbitration. Originally, Commonwealth public servants were excluded from the benefits of the Arbitration Act of 1904. This was not, it should be observed, because they were government employees and Crown servants, but simply because, as defined in the Act, the word " industry " did not apply to the functions performed by members of the public service.[25] Agitation on the part of public service groups of various kinds, however, led to the passing of legislation which secured for public servants the right of access to the Arbitration Court.[26] It was argued by opponents of this legislation [27] that it would undermine the discipline of the service not only by superimposing on it an additional authority capable of fixing conditions of service,[28] but by encouraging the formation of staff associations. This view was not accepted, however, by the Arbitration Court in the first public service litigation under the new statute, the case of *Australian Postal Electricians' Union*

21 (1920) 28 C.L.R. 436 at 449.
22 *Cf.* Blackstone Comm. I, 264.
23 (1883) 8 App.Cas. 891.
24 *Cf.* Higgins J. at 452: " What would the man in the street say when there is a strike of officers or engineers on a government dredger, if he were told that there is no industrial dispute? "
25 See Conciliation and Arbitration Act, 1904, s. 4.
26 Arbitration (Public Service) Act, 1911. By this statute public servants working under the Commonwealth Public Service Act of 1902 were deemed to be employees in an industry within the meaning of the Conciliation and Arbitration Act of 1904.
27 Commonwealth Parliamentary Debates, Vol. LXII, pp. 3562–3570; Vol. LXIII, pp. 3627–3628.
28 Then the task of the Public Service Commissioner.

v. *Postmaster-General*.[29] Higgins J. here refused to apply different principles to a claim for higher wages by public servants than he would have done in the case of ordinary private employees:

> " . . . the idea of this Act . . . is peace—peace in the service of the King, which is the service of the people; and I conceive it to be my duty to apply the same principles as I apply in other arbitrations—that is to say I have to see that provision be made for securing to the employee satisfaction of his normal essential needs. . . ."

And, on the same page (7), his Honour asserted that: " it certainly makes for the dignity and efficiency of the public service that the remedy of strike for grievances should be forever abandoned in favour of the remedy of discussion before an impartial arbiter."

Among the " normal essential needs," wage claims present the most difficult problems in public service arbitration. Money must be appropriated by Parliament which must examine closely additional calls on public funds; advantageous conditions of service like security of tenure and pension schemes, it is arguable, ought to be taken into consideration in fixing salaries; and because of the public nature of their employment, it might be suggested that governmental employees should be more " patriotic " in time of national economic crises and refrain from claiming higher wages.[30]

These arguments, however, seem to be based on the false assumption that the government as an employer of labour is inseparable from the government as governor. What an increase in the salaries of government employees is going to cost the nation should be a factor in deciding whether or not to grant such an increase only in so far as it is part of a national wages policy. To single out the salaries of public employees for restriction on the ground of the additional cost to public funds is inequitable and rests on a misunderstanding of the nature of the governmental employee's " allegiance " to the state as his employer. " What an increase will cost Parliament is not for the court to consider in making an award," [31] nor should it be for the government in its role as employer.[32] Higgins J. refused to accept the argument that the privileges of public service employment be

29 (1913) 7 C.A.R. 5.

30 *Cf.* [1914] A.R. (New South Wales) 298 at 299.

31 (1916) 10 C.A.R. 578 at 587.

32 In *Australian Telegraph, etc., Maintenance Union* v. *Public Service Commissioner* (1914) 8 C.A.R. 119, the Arbitration Court also rejected the argument that public service salaries could not be tied (as were the salaries of all private employees) to a cost-of-living index because of the alleged political difficulties which would be encountered should public service salaries have to be reduced. In this respect the government was like any other employer and could not plead " politics " to justify special consideration. See at 131.

taken into account in making a wage award [33] and in *Australian Public Service Clerical Associations* v. *Public Service Commissioner*,[34] Powers J. (at 536) rejected a suggestion that for patriotic reasons governmental employees, as such, should not make claims for higher wages during a national emergency and expressly disapproved of the consideration of such a doctrine by the court.[35]

Moreover, since 1920, the Commonwealth Public Service has had a separate Public Service Arbitrator [36] from whom an appeal lies to the Arbitration Court if the Arbitrator thinks that it would be in the public interest to grant the appeal.[37] Both the Arbitrator and the Arbitration Court have made it clear that they will interpret "public interest" not as mere departmental or even governmental interest, but as the wider interest of the community in the satisfaction of which an important part is played by harmonious relations in the government service.[38]

In a dispute with its employees, therefore, the Crown can claim immunity from federal arbitration legislation only if the dispute is not an "industrial dispute." [39] Few terms have given rise to more constitutional litigation,[40] and it is far from clear precisely what governmental activities are "industrial" so as to make the conditions of service therein subject to the jurisdiction of the Arbitration Court.

In *Australian Workers' Union* v. *Adelaide Milling Co. Ltd.*,[41] the High Court had to decide whether a dispute between an association

33 (1913) 7 C.A.R. 5 at 13.

34 (1918) 12 C.A.R. 531.

35 The argument here rejected seems closely analogous to that which would classify strikes by governmental employees as "insurrection" and is based on the same fallacious reasoning.

36 Public Service (Arbitration) Act, 1920–58, provides in detail for the "settlement of matters arising out of employment in the Public Service."

37 *Ibid.* s. 15A (1); should leave to appeal be refused an appeal lies to the Chief Judge of the Arbitration Court against the refusal.

38 *Cf. Professional Officers' Association* v. *Public Service Board* (1952) 72 C.A.R. 45 at 46; *Small Arms Factory Employees' Association* v. *Minister for Defence* (1915) 9 C.A.R. 97 at 104; *Australian Letter Carriers' Association* v. *Public Service Commissioner* (1920) 14 C.A.R. 40 at 53.

39 In each state there is also industrial arbitration legislation which applies to the Crown in varying circumstances from state to state: in New South Wales, the Industrial Arbitration Act of 1940 gives limited powers to specified tribunals to determine conditions of employment in the State Public Service, the main control over these conditions being exercised by the State Public Service Board in accordance with collective agreements negotiated between the Board and the staff associations concerned; in Western Australia, although public servants do not have a separate system of arbitration, Part X of the Industrial Arbitration Act of 1912 refers exclusively to them; in Queensland, government employees have the right of access to the State Industrial Court set up by the Industrial Conciliation and Arbitration Act of 1932; a similar right exists in Victoria and South Australia, while in Tasmania a Public Service Tribunal Act of 1958 has set up a separate tribunal to determine employment conditions for all government servants in that state.

40 See "The Jubilee of Industrial Arbitration in the Federal Sphere" (1951) 25 A.L.J. 360.

41 (1919) 26 C.L.R. 460.

of employees engaged in wheat lumping and stacking operations and the state governments controlling these operations was an " industrial dispute." Deciding that the operations were " governmental " and not industrial in their nature, the court placed great emphasis on the absence of profit in the scheme and on the exigencies of wartime defence (the Crown alleged that the purpose of the scheme was to ensure adequate supplies of wheat for the United Kingdom at a reasonable price).[42]

But in the case of the *Shire Employees*,[43] the High Court, by a majority, held that employees of a municipal corporation engaged in road-making and maintenance could be involved in an industrial dispute notwithstanding the absence of profit-making and the obvious public purposes of the work in question.[44]

It was pointed out in this case that the element of " trading " was not necessarily the *discrimen* used in deciding whether or not functions were industrial as opposed to governmental.[45] The criterion of profit is not, therefore, an accurate one.[46] It may be doubted if any suitable criteria can be found. The *Public Service* case [47] decided that " ordinary government departments are not part of the industrial system of the country " and that, therefore, employees of such departments could not engage in an industrial dispute. Similarly, the decision in *Federated School Teachers' Association of Australia* v. *Victoria and Others* [48] assumed that the " primary and inalienable functions of government " are not industrial.

These cases therefore do not provide a satisfactory solution to the problem of deciding which governmental activities come within the scope of industrial arbitration. The term " ordinary government departments " is not an immutable or an exhaustive one; as the tasks of government change, so new departments and agencies are

42 Higgins J. dissenting, rejected (at 474–475) the Crown's contentions as to wartime exigencies and pointed out that the relevant Victorian legislation under which that state government operated was expressed to be enacted " on behalf of the growers." But he thought that, in any case, the terms of s. 4 of the Commonwealth Conciliation and Arbitration Act were wide enough to give the Arbitration Court jurisdiction.

43 (1919) 26 C.L.R. 508.

44 It had already been decided that " so far as it engaged in a trading occupation," a municipal corporation was subject to the jurisdiction of the Arbitration Court— *Federated Engine Drivers', etc., Association* v. *Broken Hill Proprietary Co.* [*No.* 2] (1913) 16 C.L.R. 245.

45 *Cf.* at 526: " . . . there are municipal functions which are neither [governmental nor trading]. The case of parks and the establishment of free libraries could not properly be brought under either head."

46 See, for example, *Merchant Service Guild of Australasia* v. *Commonwealth Steamship Owners' Association* [*No.* 2] (1920) 28 C.L.R. 436 where it was stated that in order to be a party to an industrial dispute it was not necessary that an undertaking be carried on for profit.

47 *R.* v. *Commonwealth Court of Conciliation and Arbitration, ex p. Victoria* (1942) 66 C.L.R. 488.

48 (1928) 41 C.L.R. 569.

created—and whether the new creation is an " ordinary " department or a " quasi-governmental " body is often a matter of chance, even if the distinction was, in any important sense, a valid one. So, too, what constitutes " primary and inalienable " governmental functions is now well recognised to be a matter of political predilection. In the *Teachers'* case mentioned above, the High Court took the view that education was a governmental function, the nature of which could not secure for those engaged in it the protection of the Arbitration Court. Nevertheless, even at the present time, public education may not be considered " an inalienable function " of government by all shades of political opinion.[49]

Conclusion

The immediate usefulness of this Australian comparison is, of course, limited. In the United States, it is true, cases like *U.S.* v. *O'Shaughnessy*,[50] *Bailey* v. *Richardson*[51] and *Beilan* v. *Board of Public Education*[52] become difficult, if not impossible, to justify in the light of the Australian cases. On the other hand, in the United Kingdom, the public servant's rights (or lack of them) against the government is a problem only in law—the practice in this respect of the Crown and other government bodies seems to satisfy the employee organisations well enough. And even the legal problems can be exaggerated.[53]

Nevertheless the lessons to be learnt from an examination of the law of public service arbitration in Australia are not valueless. First, they demonstrate the speciousness of the reasoning in many of the decided cases relating to " dismissal at pleasure "[54]—a lesson which, unfortunately, the Australian courts and some governments still have to take to heart![55] Second, they indicate that if the granting of legally

49 The dissenting judgment of Isaacs J. in this case contained an interesting attempt to limit the scope of the " inalienable governmental functions " by dividing the educational activities of government into two separate parts. The first was " governmental regulation " which makes education compulsory and authorises expenditure from public funds—departmental officials connected with this are " representative of regal functions only and outside the industrial power." The other part was the " educational service " which is undertaken by the government, " just as a company would, if authorised, undertake a state railway or other industrial enterprise." The employees in this latter group should not, his Honour asserted, be exempt from the industrial power.

50 338 U.S. 536 (1950).

51 341 U.S. 918 (1951).

52 357 U.S. 399 (1958).

53 *Cf.* L. Blair in [1958] *Public Law* 32 at 47, 48.

54 *Dunn* v. *The Queen* [1896] 1 Q.B. 116. The latest example of the operation of this anachronistic rule is that of *Riordan* v. *The War Office* [1959] 3 All E.R. 552, from which it seems to follow that the prerogative to dismiss at will cannot be overridden even where the same prerogative has by regulation decreed otherwise. See remarks of Diplock J. at 554.

55 See *Commonwealth* v. *Quince* (1944) 68 C.L.R. 227; *Kaye* v. *Att.-Gen. for Tasmania* (1956) 94 C.L.R. 193 which, with other cases, support the " implied term " doctrine; also public service legislation in New South Wales, Tasmania and South Australia which expressly preserves the " at pleasure " rule.

enforceable rights ever became an important issue in public employment in the United Kingdom, there are no good reasons why such rights could not be given to the Crown servant.[56] Thirdly, the Australian comparisons make it clear that theories which endow the state as an employer with sovereign, illimitable and unilateral rights are unnecessary, even untenable.[57] Finally, these conclusions suggest that the gap between the principles alleged to govern public service and those of private employment, is perhaps much narrower than has hitherto been generally assumed. Indeed, the ultimate final question might well be—need there be a gap at all? And the answer might, possibly, be surprising.*

[56] Including, presumably, a right to superannuation in the case of British civil servants.

[57] This is particularly important in connection with strikes in the public service in the discussions of which theories of sovereignty play no little part; see, *e.g.*, House of Commons Debates, Vol. 207 (1927), col. 71 *et seq*.

* The material on which this article is based was obtained while on a Visiting Fellowship to the Australian National University; the writer would like to express his appreciation to the A.N.U. for the kindness shown and the assistance given to him during his visit, especially by the members of the Law School and the library staff. Any errors are, of course, the writer's own responsibility.

PLANNING APPEALS AND THE ADJUDICATION OF POLICY

DANIEL R. MANDELKER

RECENT attention to the planning process, stimulated by the Franks Report and subsequent legislation, has concentrated on the procedural and administrative problems of the planning inquiry. For example, the Ministry of Housing and Local Government has been concerned primarily with ways and means of getting its job done in a reasonable period while at the same time reducing the ever-mounting number of appeals, now nearing 10,000 annually. Discussion has not yet focused as much as it possibly should on the role of the planning appeal in the implementation of planning policy.

Is the planning inquiry simply a device for bringing information to the attention of the Minister, who then decides cases " on the merits " in terms of " policy "? Or is the planning inquiry simply one stage in the quasi-judicial adjudication of planning disputes? If the second characterisation is accurate, what is the relationship between the planning decision, which resolves a dispute in a particular case, as compared with the development plan and related ministerial statements, which attempt to provide guidance for future planning applications as and if they arise? How much guidance has been provided by the combination of these administrative techniques?

Perhaps these questions can best be approached through a concrete case. One common planning problem involves the application for residential development that is peripheral to a village and that may make a substantial change in the village community.[1] Smith owns a farm adjacent to Longcester, a small Green Belt village of 800. His field of four acres abuts compact ribbon development on the west side of the road leading from the village, which otherwise is a tight rectangle. Development on the opposite or east side of the road continues for eight houses beyond Smith's field. The site is several miles from the city which is restricted by the Green Belt ring, and there is no fear of coalescence with a nearby village that is some distance away.

Smith might apply for permission to build suburban houses on the entire field or, thinking that too extreme, he might limit his application to one or two suburban bungalows on sites adjoining the ribbon

* The author is Associate Professor of Law, Indiana University.

1 On village planning see Keeble, *Principles and Practice of Town and Country Planning*, 224–231 (2nd ed., 1959).

to the south. What considerations should determine whether either of Smith's applications should be granted or refused?

Green Belt controls have been chosen as a particularly apt example because of their apparent simplicity, their favoured place in the public imagination, and their importance in the realm of ministerial policy. While the origins of Green Belt policy are complex, and while the basis of its present application is not entirely clear, the Ministry since 1955 has recognised that Green Belts may be imposed "(a) to check the further growth of a large built-up area; (b) to prevent neighbouring towns from merging into one another; or (c) to preserve the special character of a town." [2] This aim is to be accomplished by ringing the large cities with belts of land several miles wide. Within these belts only agricultural or "open" uses are to be permitted,[3] and urban development is to be refused except for the limited "infilling" or "rounding off" of existing towns and villages.

As a planning decision, this policy attempts to go much farther in interfering with the market than anything that has been tried, for example, in America.[4] There suburban zoning is either non-existent or, if attempted, interferes less drastically with the market choice of land use. Residential development is allowed anywhere throughout suburban and adjacent agricultural zones, subject to subdivision controls which determine the quality and quantity of the amenities provided, and no serious attempt has been made to use planning to regulate the shape of the community. Since English Green Belt policy undertakes this task, the guide lines along which that policy is to be directed ought to be reasonably clear.

Since most land within the county boroughs is already developed, and since the aim of Green Belt policy is to ring the large cities, which usually are county boroughs, it usually falls to the administrative counties to administer the Green Belt. As a matter of planning administration the role of the development plan may therefore be minimised, and the role of the planning appeal may be maximised. County development plans are drawn to the scale of one inch to the mile, which obviously is far too small to show the use of a piece of land like Smith's. By way of comparison, county boroughs must be mapped to the six-inch scale. Not only does the Town Map provide more detailed control of the use of specific properties, but the largely developed character of county boroughs makes many planning questions turn on proposed changes of use. These are partly handled by the Use Classes Order,[5] which serves in much the same manner as

2 Ministry Circular 42/55, *i.e.*, Circular 42 of 1955.
3 *e.g.*, cemeteries and "institutions standing in extensive grounds."
4 Except for California, which has experimented with analogous Green Belt controls.
5 S.I. 1950, No. 1131.

an American zoning ordinance to define the uses to which land may be put in different use districts.

Under a typical one-inch county map treatment, the Green Belt notation will be washed over the entire Green Belt area, except perhaps for one or two large towns which will be provided with six-inch inset maps. Village planning, at least in terms of published maps, will have to proceed *ad hoc* as planning applications and planning appeals arise. In some counties, however, the Minister has permitted the mapping to a more intensive scale of " window villages " within the Green Belt,[6] and recent statements indicate an intention to extend this policy, at least with reference to the Metropolitan Green Belt around London. The development plan then plays a more substantial role in planning administration. Just as a land use plan of a developed area marks the boundaries between residential and non-residential neighbourhoods, so the Green Belt village plan demarcates the urban from the non-urban use.

Because of this varying treatment in the mapping of Green Belt zones, they afford an excellent opportunity for the examination of the reciprocal effect of planning adjudication upon the broader implementation of planning policy. The Smith application involves the potential addition of thirty houses or ninety people to a village of 800.[7] If Longcester is simply carried under the Green Belt notation, the decision on Smith's application is important enough to determine the village plan on an *ad hoc* basis. On the other hand, if Longcester has been mapped then the Smith decision should provide an opportunity for the testing of the village plan in terms of the specifics of a particular case. Smith's application will first be approached, however, on the assumption that no such village plan has been prepared.

Green Belt Policy and Ad Hoc Control

Under section 5 (1) of the Town and Country Planning Act, 1947, the development plan is to indicate the " manner in which . . . land in [the] area should be used." Any development of land, as defined by section 12, requires planning permission, and the erection of houses on farm land, as Smith contemplates, is clearly development. Under section 14 (1) the local planning authority, in passing on a planning application, is to be guided by the development plan and by " any other material considerations." By a form of bucket brigade legislative draftsmanship the Minister is apparently to be similarly guided when considering planning appeals under section 16. Unlike the American

[6] See Circular 50/57, para. 8.

[7] Calculated at approximately eight houses to the acre and three persons to the house.

zoning ordinance, the development plan does not confer an unqualified right to develop.

The special nature of the Green Belt zone reduces even further the helpfulness of the development plan map as a guide for planning administration.[8] Ordinarily, development plan notations can indicate what development will be permitted and what will not. Houses are contemplated in a residential zone but not usually, under the English assumptions, in an industrial zone. But the Green Belt notation does not distinguish as easily between different categories of bricks and mortar. A house for an agricultural worker might be allowed, while a house for a London suburbanite might be denied. The first would be consistent with continued rural uses, while the latter might herald the advance of urbanisation. As an instrument in the regulation of community structure, the Green Belt must control uses with reference to that structure and not only with reference to the adaptation for the neighbourhood of the land use for which application is made.

Written statements, officially approved by the Minister, are also a part of the development plan. Their usefulness in planning administration is weakened, however, by the express direction in Ministry Circular 97/50 to avoid all but the most general of statements. To date, only the Metropolitan Green Belt around London has received final Ministry approval, and the statement adopted by one of these counties on non-agricultural residential development seems typical. It provides:

> " The growth of existing settlements will be severely restricted and new buildings will only be permitted outside such settlements in the most exceptional circumstances unless required for agricultural or allied purposes."

By way of guiding the decisions in specific cases this statement does little beyond stating a presumption, the effect of which is probably to put the burden of persuasion on the applicant. It echoes the general language of the Ministerial Circulars, and is in conformity with the suggested model in Circular 50/57 except that the Circular now advises " no reference to the possibility of allowing other development in exceptional circumstances." The London area statements had all been submitted prior to 1957.

This latter advice seems merely to reinforce the position of non-agricultural residential development as exceptional. That position is crucial. For one thing, it reverses the commonly understood assumption that the burden of persuasion is with the local authority.

8 Except for London, the Green Belts are currently being administered on the basis of sketch plans that have received only tentative Ministerial approval. This has created problems of interim zoning that are too complicated to be considered in this article.

For another, it implies that the application for non-agricultural residential development will usually be denied, an implication reinforced by Circular 42/55. That Circular provides that " Apart from a strictly limited amount of 'infilling' or 'rounding off' (within boundaries to be defined by Town Maps) existing towns and villages inside a Green Belt should not be allowed to expand further." The Circular suggests that the Smith application might possibly constitute the rounding off of Longcester, but even this argument is supposed to be limited to villages for which Town Maps have been prepared.

At this point opinions diverge. The orthodox argument runs that the Minister of Housing is responsible to Parliament for planning decisions as a matter of government policy. Decisions are to be taken by him " on the merits," without regard to precedent. Indeed, precedent is difficult to formulate for planning cases, as the facts will differ radically and fundamentally from case to case. An implication of this attitude appears in the first statement on planning appeals,[9] and while it may well represent even the present attitude of the Minister's administrative staff it is certainly contrary to the Ministry of Town and Country Planning Act, 1943. That statute, still of current application, provides in section 1 that the Minister is " charged with the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land."

While the policy not to publish decision letters and not to make them generally available has made the framing of a consistent national policy an internal matter, the Ministry from time to time has issued Bulletins of Selected Appeals Decisions which are of some help. These Bulletins contain what appear to be either excerpts from or paraphrases of Ministry decision letters on what are presented as typical cases. Circular 40/59, which accompanied the last Bulletin, emphasised obliquely the value of the selected cases as precedent, and for the first time the Bulletin took the commendable step of prefacing some of its sections with a statement of policy. However, the Bulletins have reported only a minute fraction of the decided cases.

The most recent Bulletin contains a policy statement on Houses in the Green Belt which might be applicable to the Smith case. It must be viewed, however, in light of the Minister's own published record of selected Green Belt appeals involving residential applications. Twelve such cases are reported, and of these five or 42 per cent. were allowed. Two of the cases allowed involved the rebuilding of derelict cottages, which the Minister chooses to put in a different category. Apart from these two cases the Bulletins report ten cases

[9] Circular 69/49, para. 6.

of which three or 30 per cent. were allowed. The smallness of this sample and the fact that the Minister purposely reports " contrasting " cases might lead to the acceptance of these figures with some caution. But the writer's own investigations in several Green Belt counties in the London and West Midlands conurbations tend to confirm this record. In these counties the Minister's record of allowances on appeal varied from 25 per cent. to 35 per cent. in residential cases. Of more importance, however, is the fact that his record on Green Belt appeals coincides quite closely with his record on planning appeals generally. For all cases his record of allowances has hovered between 30 per cent. and 32 per cent. during the past few years.

At this point some tentative conclusions may be drawn. For the most part, local development plans and official Ministry statements attempt to give general guidance in the resolution of disputes over Green Belt applications. But while these statements would indicate a rather clear presumption against the granting of permission for non-agricultural residential development except in rare cases, tentative research would indicate that the Minister allows such permissions on approval with as much frequency as he allows development in the average case in which no presumption against the applicant exists.

An attempt must now be made to determine whether more specific guidance is available to assist in the decision of the Smith case. The Green Belt section in the most recent Bulletin does contain the following comment in its statement of policy:

> " Building which simply fills a gap in an established village may well be permissible; but it is not to be assumed that building will be allowed adjoining any houses that may already exist."

Apart from speaking, in the classic phrase, with a forked tongue, the statement throws no light on what will be considered a " gap " in a village, and the cases which follow do not involve this question.

However, two cases reported earlier in the Bulletins involve applications substantially similar to those contemplated by Smith, and in both of these cases the appeal was allowed. The first [10] was an application for two houses on a site within fifty yards of the village centre. The importance attributed to the second fact does not appear, although the Minister allowed the appeal as " rounding off " while at the same time stating that it was not intended to create a precedent for future applications. In the second case [11] an application to build thirteen houses on eleven acres was involved, but otherwise the facts are not as well reported. This site was " surrounded by houses," and the appeal was allowed as the site was found to be " well within the

[10] Bulletin XII/10 (1957).
[11] Bulletin XIII/1 (1958). *Cf.* [1958] J.P.L. 63.

natural boundaries of the village." However, the full operative facts giving rise to this conclusion were not stated.

Additional light on current planning policy may be obtained from the *Journal of Planning and Property Law*, which publishes decision letters that are sent in by one of the parties to the case. This *Journal* cannot be expected to substitute for inadequate ministerial publication, especially as it is limited to those cases which are sent to it. For example, twenty-one Green Belt cases have been published in the *Journal* since 1956, which probably marks the beginning of ministerial policy based on the 1955 Circular.[12] All of these cases arose in the Home Counties, and seventeen arose in two of the Home Counties. None involved straightforward residential development of the type contemplated by Smith. From this review it can be seen that the published guidance that is available on a case like Smith's is somewhat limited. Yet the Smith case is common enough. Lately, one appeal out of five has involved residential development on an estate or lesser scale, and no doubt a considerable number of these result from Green Belt policy.

To ascertain more fully the Minister's policy, the writer reviewed close to sixty recent residential cases in Green Belt counties in the south-east, and in the London and West Midlands conurbations. These cases have not been published. While the selection is still too small to permit any observations on the weight of the Minister's authority in cases like Smith's, enough decisions of this type occurred in the sample to permit some tentative conclusions. Smith's case involves an application for the extension of ribbon development adjacent to Longcester, a small village. It is strengthened by a continuation of ribbon development for some distance opposite the appeal site on the other side of the road.

In cases such as this the Minister has not usually allowed the continuation of an existing ribbon, not even by the building of one additional house. However, the Minister has not always been consistent, and variances in policy may be indicated by a comparison of the following two cases, each of which arose in the same county:

> *Case A*: The location of the site is approximately the same in relation to the village as the Smith site, and likewise is at the end of a two-sided ribbon of development. However, the ribbon terminates just south of the appeal site on both sides of the road; there is no extension on one side as in the Smith case. But an area of back land just to the east of the appeal site and extending some distance to the north has been zoned as part of the residential area of the village. Farm buildings rather than houses

[12] Even in the London Green Belt, official policy appears to have tightened since 1955.

constitute the development just opposite the appeal site, but this fact does not seem to have influenced the decision.

An application was made to build one bungalow, and it was allowed on appeal. The Minister held, " The plot has obviously been held for development for some time, and the surrounding hedges are well matured. An additional bungalow with a carefully designed elevation . . . would create a better impression on approaching the town . . . The Minister thinks that the proposed development might be allowed as a completion of the ribbon on that side of the main road."

Case B: The location of the site is approximately the same in relation to the village as the Smith site, and likewise is at the end of a two-sided ribbon of development. The nature of the ribbon is the same as in the Smith case; there is an extension to the north on one side. However, the site is opposite the end of the longer side of the ribbon, and so there is a gap between it and the adjacent development on its side of the road. The site is also adjacent to another single house standing alone, but this fact does not seem to have influenced the decision.

Dismissing the appeal, the Minister noted that " He attaches great importance to the preservation of green belt areas, where in his opinion there must be a severe restriction on building. There are no special considerations arising on this application which could justify an exception to the general restriction in this instance or even distinguish it from applications to build on the remaining frontage of the field. The new building on the north side of the road does not, in the Minister's view, justify similar frontage developments on the south side."

These summaries are based on the decision letters, supplemented by information obtained from the site maps and other documents contained in local files.

In these two cases, as in the Smith case, the basic problem is the same: Should there be an extension to ribbon development along a road leading out from a village? Yet the results seem difficult to reconcile. In Case A, which the Minister allowed, development stopped on both sides of the road at the appeal site and did not extend further on one side. In Case B the ribbon did extend on one side, and this fact presents a stronger case for building up the frontage immediately opposite. Yet the Minister rejects this idea while allowing Case A on the expectations of the applicant, an official attitude which hardly appears consistent with announced Green Belt policy. Other important aspects of the two cases might be noted. The opinion which allows the appeal is typical in finding special reasons relevant to the

particular case to justify its result while implicitly denying the setting of a precedent or the creation of a general rule.[13] This approach is typical. On the other hand, the opinion denying the appeal is largely content to fall back on the general Green Belt presumption against non-agricultural housing, with little analysis of the case at hand. This approach is also typical.

It will be remembered that Smith also contemplates the making of an application for a housing estate. Several of the cases examined by the writer involved housing estates, and a case from the appeals Bulletin, noted above, allowed the building of thirteen houses as the rounding off to a village. In one similar case which the writer examined, however, the appeal was dismissed on standard Green Belt grounds though the site was substantially surrounded by development and even though the Minister admitted that the allowance of the application would only lead to a rounding off.

Other cases involving housing estates demonstrate a similar failure to develop in any detail the grounds on which refusal is given. One such case involved an application to erect 200 houses on a field just adjacent to a town of 6,000 for which a town map had been prepared. Relative to the town the field occupied the same position as the Smith field. While the estate development proposed was larger, its scale in relation to the town was the same as the estate development proposed by Smith. A Town Map had been prepared for this town, and the Minister noted that " alternative sites " existed within the development area. But otherwise the statement of reasons simply contains the standard Green Belt language. The Minister attaches " the greatest importance " to the preservation of the Green Belt. The development proposed by the appellants " would seriously impair one of the few remaining gaps " in this area. " There is no sufficient justification for making an exception to his Green Belt policy."

Green Belts in Relation to Town Map Areas

In one respect the last case differs from those that have been discussed previously. Since development sites were still available in the Town Map area, this fact gave the Minister an alternative ground on which he could reject the application. In all the cases discussed previously no map had been drawn for the community involved, and planning for town growth had apparently been carried out by means of *ad hoc* decisions taken as applications were made. Would the preparation of village maps aid the Minister in the execution of Green Belt

[13] See also the evidence of Mrs. Ruth Glass and Mr. J. A. G. Griffith before the Committee on Administrative Tribunals and Enquiries, 21st day, July 20, 1956, Cols. 971–993.

policy? Prima facie, if the village plan is a good one then an application for development outside the village envelope ought to be dismissed on appeal, at least until existing sites programmed for residential use have been developed.

Longcester is in a county that has a large county town at the centre but otherwise contains only villages. Entirely within the county, a Green Belt ring several miles wide encircles the county town. Longcester is in this ring, a rural area of small villages for which a Town Map to the six-inch scale has quite unusually been approved by the Minister. Village development proposals have been transferred to an even more intensive twenty-five-inch scale. Substantial growth is contemplated for Longcester and those villages in which extensive development is considered desirable, but the growth of the other villages is to be limited to that required for "normal" or "local" needs. At the outset, the development plan appears inconsistent with Green Belt policy, which had contemplated little if any urban growth in Green Belt areas.

In 1953 Longcester had a population of 550 and was given a target population for 1974 of 710. Sufficient area to contain this increase was allocated on the Town Map and much of the proposed development has taken place, almost entirely within the programmed area. However, the 1959 estimated population is 900. As development has proceeded there has been a quickening of pace accompanied by a tightening of development control.[14] The first phenomenon is apparently due to the arrival of builders from a nearby conurbation who claim to be frustrated by Green Belt policy in that area. The second is more difficult to explain.

Seventy-seven houses were built in the village from 1952 to 1959 and, as near as can be told, sixty-five houses were refused. In recent years the volume and balance of consents and refusals has changed substantially:

	Houses built	*Houses refused*
1952-57	49	31
1957-59	28	34

In the seven-year period under review, one-half of the refusals were given and almost one-third of the building took place within the past two years. Although the plan shows 116 sites still available at the end of 1959, the flurry of refusals in recent years has largely involved applications on the periphery of the village. Some of the applications would have created ribbon development, but not all would have violated the principle of compactness which is the earmark of the plan. Either the sites programmed are not available on the market,

[14] This survey was prepared with the assistance of the county planning department.

or are difficult or costly to develop, or applicants have moved to the edges as the course of least resistance. On these points no information is available.

The Smith field had not been programmed for development, and applications to develop it have been turned down. None of these was taken to appeal, nor were any of the other refusals in Longcester. For the period 1957-59, however, four appeals involving residential applications were taken from four other villages within or adjacent to the Green Belt and Town Map areas.[15] Each of the four appeals was dismissed. The following summary will indicate the basis upon which the Minister took action:

Case facts	*Decision*
(1) Two bungalows to be sited on back land behind a 700-yard ribbon of development apparently stretching out from the village.	(1) " Development proposed would be out of place among houses which have deep plots and generous garden space "; (2) " Development plan allocates sufficient land for the foreseeable housing needs of the area."
(2) Four houses apparently adjacent to a ribbon of development in a lane which contains thirty homes already.	(1) " Prominent site in an open area of high landscape value which is proposed as a Green Belt "; (2) " Could not be regarded as infilling."
(3) Nine houses on a site located between existing development; apparently not in a ribbon but decision not clear on this point.	(1) Supports present policy of resisting further ribbon building and keeping village growth to minimum as planned; (2) Development Plan provides for local needs and " some land was still available."
(4) Five acres opposite ribbon of eleven houses; village just outside Green Belt and the Town Map area but village plan in course of preparation.	(1) Minister approved Town Map showing future development in larger villages and this provides for major population growth; (2) Other land available in this village, where only minimum growth contemplated.

In Case (1) the applicant alleged that the prices asked for existing sites were exorbitant, and in Case (3) the applicant alleged that he had been unable to acquire other land in the village. This would indicate that these villages might be subject to pressures similar to those evident in Longcester. Minimum growth had been planned for village (3) as well as village (4) and in the second village the facts indicated

[15] Official approval of the Town Map dates from 1957, as does unofficial approval of the Green Belt sketch plan.

that little building had indeed taken place as several consents not yet built upon were still outstanding. In one or two cases the local authority's refusal reasons were given and in these instances the Green Belt had not been relied upon, although in one case that did not prevent the presentation of arguments on Green Belt grounds. Yet the villages are all in or bordered by the Green Belt and it would seem of some importance to know why the basis of three of the opinions was shifted to the development plan, especially since this plan contemplates village expansions which seem contrary to the Green Belt policies discussed above.

Planning Precedent and Planning Policy

While this analysis of Green Belt decisions is admittedly based on a small sample, it does permit some tentative observations about the function performed by the planning appeal process. One striking fact is the failure so far to differentiate between two major types of planning issues. An application such as Smith's tests the boundaries of village development and it may fall in two distinct categories. At one extreme, an application for one house adjacent to the village, as Smith might propose, can be said simply to involve the adjudication of the village plan. One additional house does not necessarily upset planning policy, and the question should be one of whether the line of development has been properly drawn.

At the other extreme, an application for thirty houses, as Smith might also propose, involves an issue of planning policy in so far as the granting of the application might do violence to the village plan. Nor is the size of the proposed development the only criterion. If several applications for houses have been granted in a neighbourhood outside the development area, the *n*th application for one more house may also present an occasion for a reconsideration of the village plan. But the ministerial statements and decisions that have been discussed do not on their face show an appreciation of these distinctions. Whether or not the case involves one house or several, the grounds for decision tend to be the same.

Nor do the decisions grapple with the details of planning problems. In the Green Belt cases in which no Town Map had been prepared the Minister tended to fall back on general presumptions to dismiss the appeal or to rely on individual circumstances to uphold it. In the Town Map cases he appeared content to rely on the planning decisions as shown by the development plan, which he had previously approved. The Minister's attitude in the second group of cases might be justified on the ground that the time for review of the Town Map should come at the point when, after five years, it is subject to statutory review. Longcester's map was submitted in 1955 and approved in 1957. But

the number of applications on the periphery of the village may indicate that land programmed for residential development is not in fact available, and that immediate adjustment of the village map is in order for this reason. Yet allegations of land shortage, which were made in two of the cases summarised above, were rather summarily dismissed by the Minister.

Part of the problem lies in the nature of the decision letter. Seldom longer than two pages, the bulk of the letter merely summarises the arguments presented on both sides. The decision is given in one paragraph, and while this is not necessarily too short to prevent a satisfactory statement of reasons it tends to be so in practice. Usually the decision is given in terms of the operative facts and conclusions without explaining why they were arrived at in a particular case, and for this reason the conflicting arguments are not always explicitly resolved. In addition, one of the changes in procedure initiated after the Franks Report has sometimes had an adverse rather than a beneficial effect. Circular 9/58 now requires that the Minister give his reasons when he disagrees with the Inspector. This directive has apparently been interpreted to mean that the Minister need not necessarily give his reasons in the 95 per cent. or so of the cases in which he agrees with the Inspector. An example of this tendency occurred in Case (2) in the summary above. Since the Inspector's comments as summarised in the decision letter come from the Statement of Observations section of his report, and since these observations might be limited to a factual comment on the case under review, the value of the decision letter as precedent may be lessened even further.

The giving of reasons in ministerial decisions is now required by section 12 of the Tribunals and Inquiries Act, 1958, but reasons alone have little meaning in the absence of planning concepts that are adequately explained and commonly understood. For example, why is rounding off sometimes allowed and sometimes not? This deficiency in concept affects the reporting of facts as well as the giving of reasons. Details of the A and B cases discussed above, in a form sufficient to relate them to the Smith case, had to be obtained from the files. In the four Longcester county cases the decision letters alone were used, and the summaries illustrate the differences from opinion to opinion in what the Minister considers to be the crucial and operative facts.[16]

Of course, a seemingly inexplicable ministerial decision will often make good sense when viewed with reference to the site maps and the fuller contents of the planning file. There seems to be a tendency,

[16] It can be argued that the Green Belts do not provide a fair example of planning controls. But a policy which starts with a firm presumption against urban development would seem as straightforward and cleancut as any. Furthermore, on no planning issue except petrol filling stations has the Minister provided Circular guidance in a form sufficient to be applied to the decision of specific cases.

furthermore, to base decisions on factors not made clear in the decision letter. For example, the Minister has sometimes relaxed Green Belt controls because he has felt that circumstances in the area concerned warranted a change. And the effects of an allowance which is seemingly disruptive of local policy will often be meliorated by informal consultation with local officials after the decision is rendered. Informal adjustments of this type can provide a type of generalised planning review which is absent from the decisions themselves, but it is often spasmodic and not always effectively communicated.

It can also be argued that the planning appeals process has been judged under assumptions different from those under which it operates. As indicated earlier, the resolution of planning disputes might be said to be a matter of policy for the Minister, who in turn is responsible to Parliament. Under this view, the purpose of the inquiry is informative only, and the Minister's letter rather than being an explanation is the notification of a decision taken on policy grounds which need not entirely be explained. Informal adjustments and *ex parte* consultations of the type which have just been described fit this conception of the planning process very well, and permit a fluidity in administration that does have positive merits.

Even viewed as a forum for the collection of information, however, the planning appeal would at present seem to have its limitations. If the published material available to the parties does not provide a sufficient clue to the issues involved, what are they to do? The applicant will be faced with a refusal notice from the local planning authority which usually echoes the standard phraseology of the Minister's Green Belt decisions. Counsel for Smith might allege rounding off as the grounds of appeal, and the local authority in the statement of reasons now required by way of answer might deny it, but without a sufficient lead from the Minister each will be hampered in developing their arguments as intelligently as they would like. No wonder that arguments at Green Belt inquiries range up and down the scale of possible planning issues.

At the moment, the planning appeals process is in a halfway house. Pushed by the recommendations of the Franks Report, the Minister has given an increasingly judicial form to the planning inquiry, and is beginning to give more attention to the problem of planning precedent. In what direction the system should go from this point is open to question. Perhaps the test comes in the realisation of policy. This article has indicated some variance between the Green Belt conception in its formulation and the Green Belt conception in its implementation. At the least, the planning system might have to provide more systematically for the answers upon which a satisfactory appraisal of policy can be based.

URGENCY MOTIONS IN THE COMMONS

W. H. Greenleaf

Standing Order No. 9 of the House of Commons affords the unofficial Member of Parliament an opportunity to ventilate issues of public policy. In fact it is the only provision made in Standing Orders for the interruption of arranged business to debate an emergency situation. But while matters of urgency have not fallen in number since the rule was introduced in 1882—if anything the opposite is true—the use of the Standing Order has diminished considerably. It has declined in Parliamentary significance during a period in which its use might have been expected to increase. After describing the present provisions and origin of Standing Order No. 9 and the nature and extent of this decline, I review some of the factors involved. Finally, as some indication of the part played by the Standing Order in the present-day conduct of Parliamentary business, I discuss in detail how it has been used since 1939.

I

The provisions of the Standing Order, which apply only on the first four days of the week and not on Friday or Saturday, now operate as follows.

(i) No motion for the adjournment of the House may be made until all the questions asked at the commencement of business have been disposed of.

(ii) If a private Member wishes to move the adjournment after questions and before the orders of the day or notices of motion have been entered upon he must rise in his place and propose to move the adjournment of the House for the purpose of discussing "a definite matter of urgent public importance"—a crucial phrase of which Mr. Speaker's interpretation is now final.

(iii) The Member must give written notice of the motion to the Speaker and if its terms are found to be in order the leave of the House must then be obtained for its introduction. If the House is not unanimous the motion can only be made if at least forty M.P.s rise in their places in support. If less than forty but not fewer than ten Members rise to support the motion the M.P. who wishes to move the adjournment

* The author is Lecturer in Government in the University of Hull.

may ask for a division to determine the view of the House. In practice nowadays if a motion gets this far the necessary support is always forthcoming.

(iv) If the proposal passes all these obstacles then the business of the House is interrupted at seven o'clock the same evening and the urgency motion is then debated until not later than ten o'clock.

(v) The business actually interrupted by the debate may be continued at its close for the length of time lost.[1]

The original Standing Order was introduced as one of the procedural reforms of 1881–82. Before then Members had an unrestricted right to move the adjournment of the House at any time and on any topic. With the development of a question period in the mid-nineteenth century use was made of the adjournment procedure to develop the interrogation of a Minister into something like an interpellation.[2] A Member would move the adjournment if he wished to make a speech while putting a question or if he considered that an unsatisfactory answer had been given and wished to pursue the matter further there and then. When this occurred the planned business of the House was disrupted and in consequence the practice aroused some disquiet.[3] But from being an inconvenience the practice became an abuse in the hands of Parnell and the more extreme Irish Members. In November 1882 Mr. Gladstone said that the practice of moving the adjournment before public business was unknown twenty to twenty-five years before, and until ten years previously it had not been a serious enough difficulty for the House to give attention to it; it had only become a serious evil in the preceding Parliament.[4] The outcome of the obstructive tactics of the Irish M.P.s was the procedural reforms introduced in 1881–82. The new rule was finally agreed after extensive debate and, on November 27, 1882, embodied in the Standing Orders.[5] There have been various changes of detail since then. For

1 *Standing Orders of the House of Commons, Public Business, 1959*, H.C. Paper 17 (1959–60), pp. 10–11; *Sir T. Erskine May's Parliamentary Practice* (16th edition, London, 1957), pp. 366–367. The Standing Order has been amended five times: in 1902, 1906, 1927, 1947 and 1948. I have throughout referred to it under its present number as "Standing Order No. 9."

2 Select Committee on Procedure, Third Report, H.C. Paper 189-I (1946), p. xvii; Second Report, H.C. Paper 58-I (1946), p. 1.

3 J. Redlich, *The Procedure of the House of Commons* (London, 1908), I, 117–119; II, 250, n. 1. P. Howarth, *Questions in the House* (London, 1956), pp. 191–196.

4 H.C. Deb., 3s., 274 c. 1372–73. From 1873–77 there were 31 of these adjournment motions; from 1877–82 the number rose to 64 and more were being pressed to a division; see A. L. Lowell, *The Government of England* (New York, 1926), I, 333–334.

5 The number of Members whose support was necessary seems to have been put at forty not simply because this is the quorum of the House (as was suggested to the Select Committee on Procedure in 1946, *e.g.*, 3rd Report, qq. 2482, 5312) but to make it difficult for the small group of extremist Irish Members to abuse the new

example, the time of the debate has been altered. It originally took place immediately after the motion had been accepted by the House. But in 1902 a delay of several hours was interposed which was, of course, to the Government's advantage for it was enabled to escape the risk of surprise and to prepare its case. But despite such changes the formal essence of the rule has remained the same.

II

Until after the First World War the procedure was fairly easily invoked. The support of forty Members could usually be obtained and, despite some limitations imposed by rulings from the Chair, it was not very often that a motion introduced under Standing Order No. 9 was not debated. But since the early 1920s this trend has been reversed and it has become more and more difficult to obtain leave to move the adjournment of the House to discuss " a definite matter of urgent public importance."

In 1946 the Select Committee on Procedure printed in its Third Report a table showing the decline in the availability of adjournment motions under the Standing Order. This Table shows the number of motions offered, refused and allowed in each session of Parliament from December 1882 until 1938–39. It was reproduced by Sir Ivor Jennings in the new edition of his *Parliament* in 1957 but unfortunately he did not take the opportunity to investigate the position since 1939. Nor did the most recent Select Committee on Procedure provide these data in its report issued last year.[6] On page 277 below is a table (Table III) which I have drawn up for the years 1939–58 and which complements the table in the Report of the 1946 Select Committee. The whole range of information is summarized in Table I below which shows quite clearly the decline which has occurred in the availability of adjournment motions under Standing Order No. 9, especially since the First World War.

TABLE I

Period	No. of Motions Offered	No. of Motions Allowed	% of Motions Allowed
Dec. 1882–Dec. 1901	154	131	85·1
1902–20	163	116	71·2
1921–39	114	28	24·6
1939–58	103	10	9·7

rule. An attempt to reduce the required number to 15 failed, though the rights of minorities were recognized because 10 M.P.s could force a division to test the sense of the House as a whole: see H.C. Deb., 3s., 274, c. 1423–54, 1464–84, 1487–91.

[6] Sir Ivor Jennings, *Parliament* (2nd ed., Cambridge, 1957), pp. 112–113; Report from the Select Committee on Procedure, H.C. Paper 92-I (1959). See note 16 *infra*.

The number of motions put forward has fallen by about one-third (though to the figures in the Table must be added an unknown number of proposed motions which never reached the floor of the House at all due to an adverse ruling given in private by the Speaker); and the drop in the number of motions accepted has been substantial. The fall from 131 in the first period to a mere ten in the last is most marked. The decline is clear and quite sudden. To what can it be attributed?

III

An obvious factor in this decline is the growing pressure of Parliamentary business. Just as the Standing Order was originally introduced to prevent the undue disruption of the work of the House so, as the amount of work to be done by Parliament has increased and as the pre-arranged timetable has become more important and rigid, the rule has inevitably been more and more restricted in its operation. The pressure of Parliamentary work went up from the 1880s onward, but up to the First World War there was usually no great difficulty about the occasional interruption of business. Consequently the number of successful motions under the Standing Order does not show a very great fall. But after 1919 this pressure grew enormously. In the field of legislation, for instance, it was not simply that the number of Bills which Parliament had to consider increased—in fact the average number of Bills per session went up only slightly—but that statutes tended to become longer and more complex. Table II shows the progressive growth in the average length of statutes from 1906 until just before the Second World War.

TABLE II [7]

Group of Sessions	Average No. of Statutes per Session	Average No. of Statute Book Pages per Session
1906–13	49·6	355
1919–1928/29	57·7	641·8
1929/30–1937/38	57·0	995

In such circumstances the too frequent use of the urgency motion would obviously have caused some difficulty because of the interruptions of the timetable which would have been entailed. Until 1947 the business which was interrupted for the urgency debate had to be postponed and this upset the programme of subsequent days. In the memorandum which Sir Gilbert Campion (as he then was) presented to the Procedure Committee in 1946 he remarked on the inconvenience caused by a successful urgency motion:

[7] Extracted from the Table in the 3rd Report of the Select Committee on Procedure (1946), p. 356; *cf.* p. 349, para. 7.

> " Nowadays, when somebody under this rule ' gets the adjournment,' the result is very disturbing to many busy people who have made plans and fixed engagements on the basis of the previously announced programme. The Minister concerned may have to cancel an engagement in his constituency, Whips and Members of all parties have suddenly to make new dispositions. . . ." [8]

Hence the rule was granted less and less, partly at least because it was felt undesirable to disturb a settled programme of business except for very good reasons.

But this growth in the amount of work, coupled with the difficulties caused by the disruption of the timetable, is not the only factor. There is also the growth of the practice of arranging debates " through the usual channels." This has become more common than it was before 1914, probably because the bitterness of party conflict has been reduced and the Government and Opposition Whips work together more easily. Consequently, if a new and important issue arises the Opposition will usually seek to arrange a debate informally rather than try immediately to move the adjournment under Standing Order No. 9. The practice of having Supply Days scattered throughout the session, for instance, gives the Opposition a number of opportunities to discuss Government policy. In this way many major issues tend to be excluded in practice from the range of topics raised under the Standing Order, unless of course a backbencher tries to ventilate a matter on his own initiative or unless the Opposition feel so strongly about something that they want a debate straight away.[9]

A similar factor is the practice of having a half-hour adjournment debate every evening from Monday to Friday. This provides an opportunity for private Members to ventilate issues and grievances and has become a regular feature of the Parliamentary scene since 1945. It may be regarded to some extent as a substitute for the urgency motion under Standing Order No. 9, especially as the latter rule has recently been so difficult to invoke with any chance of success. If a Member is faced nowadays with an answer which he considers unsatisfactory he says he will " raise the matter on the adjournment," *i.e.*, in the evening, whereas at one time he might well have tried to move the adjournment under Standing Order No. 9 to secure an immediate discussion.

However, none of these factors could directly influence the

[8] *Ibid.* p. xxxviii, para. 25; *cf.* the remarks of Mr. Speaker Morrison at H.C. Deb., 5s., 598, c. 1265.

[9] *Ibid.* qq. 1979–85, 2448, 3100, 5910. Though of course the right to choose Supply Day subjects for debate rests with the party leaders and is not in this sense an alternative opportunity for the backbencher: see the point made in the debate on S.O. No. 9 on July 29, 1957, at H.C. Deb., 5s., 574, c. 883–885.

availability of the urgency motion. They could only do so through the effect they might have on the rulings of the Speaker. So it is essential to consider the role of the Speaker which is intimately linked with all procedural developments in the House.

As early as 1908 Redlich discerned " the strengthening of the disciplinary and administrative powers of the Speaker " over the previous quarter of a century, *i.e.*, since the events which had led to the procedural changes of the early 1880s. This process has since continued and has affected very considerably the use of Standing Order No. 9. In the latest edition of *Erskine May* it is stated that the Speaker has the discretionary power to decide whether an urgency motion conforms to the provisions of the Standing Order.[10] This present view is in interesting contrast to that which prevailed when the Standing Order was first introduced. It is quite clear that there was then no intention that the Speaker should have such discretionary power in respect of the Standing Order. For why else was it necessary for forty Members to rise in support, or perhaps to have a division, if not to see whether the House itself thought the motion was in order? [11] In 1882 when the form of the proposed rule was being discussed a suggestion that the Speaker should interpret the sense of the House on an urgency motion was rejected on the ground that this would involve too difficult and invidious a task; and Mr. Speaker Brand specifically disclaimed any authority to determine whether a proposed motion involved " a definite matter of urgent public importance." Even the suggestion, which has been made by those whose views must command great respect,[12] that the Speaker originally decided whether an issue was " a definite matter " leaving interpretation of other aspects of the rule to the House itself, seems to me to exaggerate his role in the early years of the Standing Order. Initially the part played by the Speaker was quite passive. He simply accepted the asurance of the *mover* of the motion that it fell within the terms of the Standing Order and put the question to the House to see whether at least forty Members supported it. If this degree of support was forthcoming then the House automatically and at once went on to discuss the topic raised. The only other action the Speaker took was to ask for a written notice of the motion so that he could determine the relevance of contributions to the subsequent debate. During the first four years of the operation of the new rule a few motions were excluded because less than forty Members rose in support, but it was

10 Redlich, *op. cit.*, I, 206; *Erskine May* (ed. cit.), pp. 250, 369.

11 See, *e.g.*, the 3rd Report of the 1946 Select Committee, q. 3118, and *cf.* the view expressed by Mr. Balfour as late as 1902, H.C. Deb., 4s., 107, c. 315.

12 See, *e.g.*, the suggestion made before the 1946 Procedure Committee, 3rd Report, qq. 1953–56; and also see the Report of the 1959 Committee, memorandum submitted by Sir Edward Fellowes, p. 11, para. 52, and qq. 158, 470.

not until 1887 that a motion was refused by the Speaker on any other ground.[13]

At the beginning of the century Mr. Speaker Gully began to be rather less flexible in the interpretation of the rule than had been usual up to then, though the proportion of motions refused each session was still usually quite small. It was in fact not until after 1921, when Mr. J. H. Whitley was elected Speaker, that a really sharp decline set in. He was much more restrictive than his predecessors in his rulings on the Standing Order: necessarily so perhaps, as his accession to the Chair coincided with the great post-war increase in legislative activity and the development of a more acute pressure on Parliamentary time. Compared with Mr. Speaker Lowther, who preceded him in the immediate post-war years, he was nonetheless more severe. Certainly he dealt with attempts to move the adjournment under the Standing Order with a brusqueness that is apparent even in the pages of *Hansard*. Mr. Speaker Fitzroy who succeeded him in June 1928, and who held office for nearly fifteen years, continued to interpret the rule with the same stringency during his long tenure of the Chair. The natural result was that the rulings of successive Speakers built up a series of limitations to the use of the Standing Order and, as these limitations increased in number, it became more and more difficult to get a motion accepted. The mere attempt to invoke the rule was discouraged. Mr. Seymour Cocks told the Select Committee on Procedure in 1946 that under Mr. Speaker Fitzroy—

> " Members came to the conclusion that it was almost impossible to get the motion accepted, and so they did not move any motion at all. . . ." [14]

One example of this growing narrowness of interpretation is the meaning attached to the condition that a motion will be disallowed if it deals with no more than " the ordinary administration of the law." What this originally meant was the administration of justice, of trial and punishment in the courts of law. But since 1920 it has been extended to cover what in many cases is the ordinary administrative action of departments.[15]

[13] H.C. Deb., 3s., 274, c. 1358, 1447–48, 1481; 275, c. 21–22; 300, c. 1745; 316, c. 1613.

[14] Select Committee on Procedure (1946), 3rd Report, q. 3070. There are many comments of this kind in the Procedure reports and in debates. Redlich refers to the restrictive effect of Speakers' rulings at the beginning of the century even, *op. cit.*, II, 251–252.

[15] Select Committee on Procedure (1946), 3rd Report, p. xviii, para. 55; *Erskine May*, p. 372; H.C. Deb., 5s., 443, c. 1569. On one occasion Mr. Speaker said that he had to be careful about accepting a motion because each case might create a precedent! (H.C. Deb., 5s., 573, c. 769.) The reasons for refusal of a motion are classified in *Erskine May*, pp. 367–374, and are discussed briefly by H. V. Wiseman, " Private Members' Opportunities and Standing Order No. 9 " [*Parliamentary Affairs*, XII (1959), pp. 377–391].

Since the rule was introduced in 1882, then, and in particular since 1921, Speakers have greatly extended their control over the use of the Standing Order. Their public and private rulings have narrowed down the operation of the rule very considerably. So much so that its successful invocation is now a rather rare Parliamentary occasion.

IV

What use, then, is made of the Standing Order today? Table III gives details of urgency motions put forward from the beginning of the 1939–40 session to the end of the 1957–58 session.[16]

TABLE III

Period IV, 1939–58

Session	Government	Number of Motions (a) offered	(b) refused by Speaker	(c) allowed by Speaker
1939–40	Conservative/Coalition	0	0	0
1940–41	Coalition	0	0	0
1941–42	Coalition	1	1	0
1942–43	Coalition	1	1	0
1943–44	Coalition	1	1	0
1944–45	Coalition/Conservative	3	2	1
1945–46	Labour	9	7	2
1946–47	Labour	6	5	1
1947–48	Labour	2	2	0
1948	Labour	0	0	0
1948–49	Labour	4	4	0
1950	Labour	4	4	0
1950–51	Labour	4	4	0
1951–52	Conservative	16	14	2
1952–53	Conservative	20	18	2
1953–54	Conservative	11	10	1
1954–55	Conservative	3	3	0
1955–56	Conservative	8	8	0
1956–57	Conservative	5	5	0
1957–58	Conservative	5	4	1
	Totals 1939–58	103	93	10
	Annual Average	5·42	4·89	0·53

[16] I am indebted to Mr. S. Gordon, Librarian of the House of Commons, for valuable assistance in the compilation of the data on which this Table is based. The Table is drawn up on the same lines as that in the 3rd Report of the 1946 Select Committee (pp. liv–lv) which covers three nineteen-year periods from 1882–1939. I

This table indicates how very difficult it has been in recent years to use the Standing Order. Many sessions of Parliament may now pass by without a single debate under its provisions. From 1882 until 1920 there were only two sessions with no debate on an urgency motion; from 1921–39 there were eight such sessions; but from 1939–58 there were thirteen, more than in the whole previous history of the rule.

Four questions may now be asked about the use of the urgency motion during this recent period.

(i) *Which Members have made most use of the Standing Order?*—As might be expected the Opposition try to use the Standing Order as a means of harrying the Government. For example, after the Conservatives returned to power in 1951 there was, as Table III shows, a sudden increase in the number of urgency motions which were offered. A slighter increase also took place in 1945–46 after the formation of the Labour Government. In each case most of the motions were originated by Opposition Members, usually backbenchers.[17] In general since 1945 Labour M.P.s have tried to use the Standing Order more when there is a Conservative Government in office, and Conservative M.P.s when Labour is in power. Table IV shows this.

TABLE IV

Number of attempts to move the adjournment under Standing Order No. 9 by

	Conservatives and allies	Labour	Liberal	Other	Total
1939–45	1	4	0	1	6
1945–51	16	8	3	2	29
1951–58	2	65	1	0	68
Total	19	77	4	3	103

But this Table also shows that attempts to use the Standing Order have been much more characteristic of a Labour than of a Conservative Opposition. From 1945 to 1958 each party was in power for roughly the same length of time. Yet whereas the Conservatives only

have not checked the figures for each session covered by the three earlier periods; though the figures given in the Select Committee Report seem substantially correct there are some inaccuracies. Dr. Wiseman is in error in suggesting that only 73 motions under the Standing Order were offered between 1945 and 1957 (*op. cit.* pp. 379, 383). The correct number is 92 as Table IV shows.

[17] *Erskine May* says that urgency motions are "often moved on behalf of an Opposition by one of its leaders" (p. 305). In fact, since 1939 such a motion has only been moved three times by the Leader of the Opposition, and only about one-quarter of all Labour attempts and one-third of Conservative attempts have been made by front bench Members.

made sixteen attempts from 1945–51 (an average of about 2·7 a year) Labour Members tried 65 times from 1951–58 (a yearly average of about 9·3).

It is clear, too, that not only do Labour Members try to use the Standing Order more frequently when in opposition but also that they are more likely to use it when their own party is in office than are the Conservatives. Between 1951, when the Conservatives regained power, and 1958 only two Conservative Members tried to move the urgency adjournment, in each case on a relatively minor issue. But between 1945 and 1951 Labour backbenchers made eight attempts to criticise administrative or policy action taken by their own Government. All this seems to indicate that Labour Members are generally more active—or perhaps more captious—in criticism than Conservatives, who seem more disciplined—or more docile. In fact, during the whole period covered by Table IV, 1939–58, just under three-quarters (74·7 per cent.) of *all* attempts to invoke Standing Order No. 9 were made by Labour Members.[18]

Further, a detailed analysis of these attempts throws a rather interesting light on Parliamentary activities: for it appears that a quite small group of Labour Members has in fact been responsible for a substantial proportion of the total number of attempts made between 1939 and 1958 to move the adjournment under Standing Order No. 9. During this period 54 different M.P.s tried to do so on a total of 103 occasions. Sixteen Labour, fifteen Conservative, one Liberal and one " other " Member have each made one attempt. Six Labour, two Conservative and one " other " Member have each made two attempts. But in addition to these there are twelve Members who have each made three or more attempts to a total of 52—just over half the attempts made. All but one of these twelve were Labour M.P.s (the other was Mr. Clement Davies, the then Liberal Leader, who made three attempts). *These eleven Labour Members between them accounted for just under one-half* (47·6 *per cent.*) *of all attempts in this period.* The five M.P.s who have tried to move the urgency adjournment most often were all Labour Members: S. Silverman (as many as nine separate attempts), F. Brockway (seven), Ellis Smith (six), R. T. Paget (five), E. Shinwell (four). This small group of five Labour M.P.s together tried to move the adjournment under Standing Order No. 9 no less than thirty-one times: this constitutes slightly less than one-third (30·1 per cent.) of the total attempts made between 1939 and 1958.[19]

18 Since the beginning of the 1958–59 session to date (March 1960) there have been nine further attempts, all by Labour Members. Two were successful.

19 The other six Labour Members who make up the eleven mentioned in the text are: W. Benn, Mrs. B. Castle, D. Donnelly, T. Driberg, J. Dugdale and L. Hale, each of whom made three attempts.

(ii) *What are the topics that have precipitated the attempts to use the Standing Order*?—The issues which have since 1939 led to an attempt to invoke the Standing Order have been quite varied ranging from personal cases to important issues of policy (though of course questions of wide scope are excluded by the terms of the Standing Order, as the issue involved must be " a definite matter "). For example, in May 1952 Mr. P. Bartley, the Labour Member for Chester-le-Street, tried unsuccessfully to discuss " the refusal of the Secretary of State for War to grant compassionate leave in the case of Lance-Corporal Dobson whose brother is at the point of death." A month later Mr. (now Earl) Attlee also failed to get the Speaker's approval for a motion on " the air attack on power plants of the Yalu River. . . ." [20] The general balance of subjects raised may be indicated as follows: foreign affairs (raised nineteen times, successful once); imperial affairs (25/5); home affairs (46/3); military and naval affairs (7/1); and Parliamentary affairs (6/0). Some topics were raised more than once: those affecting the fishing industry arose on four occasions; Egypt and the Middle East on six; Korean matters on five; the Seretse Khama affair and related issues on four; Cyprus on four; and Kenya on no less than seven occasions. By far the most popular general topic under the heading " home affairs " was industrial issues, some twenty attempts coming under this grouping. Naturally enough, Members exploiting this device tended to concentrate on the type of issue in which they had a special interest. Mr. Silverman, for example, devoted four of his nine attempts to the Home Secretary's exercise of the prerogative and three of these were about capital sentences; Mr. Brockway's attempts dealt wholly with colonial affairs; similarly Mr. Benn and Mr. Griffiths raised only colonial matters.

(iii) *Why are attempts still made to use the Standing Order when the chances of success are so slight*?—Attempts to move the urgency adjournment continue to be made despite the strict limitations which are known to exist and despite the high odds against a motion being accepted by the Speaker. The rules are fairly clear and it must be obvious—it has certainly been obvious to Mr. Speaker—that as nowadays interpreted all but the rarest topic is excluded. In the last session of the period covered by Table IV, 1957–58, the rules quite obviously excluded four of the five topics raised (and I should myself have thought that the other one was also ruled out although it was in fact allowed). Yet M.P.s continue to try. This is not the place to review Parliamentary tactics or to analyse the psychology of private Members, but some suggestions about motive may be made, to indicate

[20] H.C. Deb., 5s., 501, c. 669; 502, c. 2042.

why, in the face of all the odds, some M.P.s continue the almost hopeless attempt.

There is, of course, the slender chance of success and it is perhaps felt that even this is worth taking. No doubt Members get carried away in the exchanges over questions and ministerial statements which immediately precede the point in the Parliamentary timetable when the Standing Order may be used. The concern or anger of the moment over what are taken to be the defects of ministerial policy probably seem to lead naturally to the attempt, however fruitless, to get a debate at once, to make an immediate protest. There may be, too, an opportunity here for a Member to say that he has explored conscientiously all avenues to assist constituents or interests with which he is connected—even though he knows that nothing is likely to happen except that the topic is mentioned. It can only be a motive of this kind which prompted an attempt to discuss the picking of the plum crop in Evesham as " a definite matter of urgent public importance." [21] It is not even as though there is necessarily any great publicity involved. It is true that the House itself will still be full after questions, and a certain amount of Parliamentary advertisement may be obtained simply by the attempt to move an urgency motion. But in most cases the attempts are not widely reported in the Press and the impact, if any, must usually be a limited one. It may be that this is one of the few ways remaining in which the active backbencher can still try to make himself and his views conspicuous for even so brief a moment and thus try to break the front bench monopoly. The Standing Order is also perhaps a tactic exploited by the Opposition or private Members when they wish to embarrass the Government or when they want to ventilate a disagreement with its policy; and which is used perhaps in the remote hope that a debate will be allowed, perhaps simply to vent their ire or to raise an issue and give the Government notice that this is a topic on which it should keep a wary eye.

(iv) *What is the possibility of the downward trend being halted or reversed*?—The problem of the urgency motion is, as the present Clerk of the House of Commons has said, " one of the most difficult of all procedural problems." [22] The central difficulty is how to maintain the rights of Members to raise grievances and obtain early discussion of urgent matters without at the same time unduly inhibiting " the certainty of business."

The 1946 Select Committee on Procedure felt that the decline in the success of motions offered under Standing Order No. 9 should

21 H.C. Deb., 5s., 454, c. 926–927: as the Speaker said, this subject did not fall under the S.O., " not by miles " (*ibid.*).

22 Report of the Select Committee on Procedure (1959), p. 11, para. 52.

be reversed and suggested, *inter alia*, that the Standing Order should be amended so that the time spent on an urgency motion " should automatically be made up by exempting the superseded business for the corresponding amount of time." [23] It was hoped that this would limit the unsettling effect of the interruption of business and perhaps make possible an increase in the availability of motions under the Standing Order. This proposal was accepted by the Government and embodied in Standing Orders in 1947 but no increase in the proportion of successful motions took place. As Sir Edward Fellowes told the more recent Procedure Committee, the device " has not fulfilled the hopes of its sponsors." [24] The report of this Committee, contained further recommendations designed to halt the decline in the availability of the urgency procedure. These were that:

(a) Mr. Speaker should be " instructed by the House that in future he should be at liberty to disregard rulings which in his opinion unduly restrict the original intention of Standing Order No. 9 as expressed by Mr. Speaker Peel " in 1894 (*i.e.*, that what was contemplated by the Standing Order was the occurrence of some emergency in home or foreign affairs) and that therefore full scope for debate on such emergencies should be granted;

(b) the rule which prevents acceptance of an urgency motion if it anticipates other planned proceedings should be abolished as it is irrelevant to the question of urgency;

(c) the issue of public importance should be left to the decision of the House under the rule requiring the support of forty M.P.s (an attempt during the proceedings of the Select Committee to raise this number to one hundred was defeated);

(d) motions about foreign affairs in which no Government responsibility is immediately involved should nonetheless be in order if it seems that the Government might subsequently be concerned;

(e) when the Speaker thinks fit he should be entitled to defer his ruling without prejudice to the issue of urgency, so that he may reflect at more leisure than is usually possible at present whether a proposed motion falls within the terms of the Standing Order.[25]

None of these proposals commended itself to the Government and none was embodied in the recommendations of change made by the Government on the basis of the Select Committee's report. These

[23] Select Committee on Procedure (1946), 3rd Report, p. xviii, para. 56. The detailed proposals are discussed by Wiseman, *op. cit.*

[24] Report of the Select Committee on Procedure (1959), p. 11, para. 54.

[25] *Ibid.* p. xix, para. 34.

recommendations were recently discussed by the House[26] and a number of speakers raised the question of alterations in Standing Order No. 9. In his reply on behalf of the Government the Leader of the House, Mr. Butler, without going back on the Government's basic decision not to accept the Select Committee's main recommendations, said that he was ready to discuss with Mr. Speaker the possibility of his delaying his ruling if he was not certain whether a motion was in order. It had been pointed out during the debate that under the present procedure the Speaker must often give a ruling on the spur of the moment and without careful consideration and that, because he is not given time for reflection, he must often make decisions which are perhaps open to criticism. In such circumstances the authority of the Chair may be impugned and this is a situation which it is clearly desirable to avoid. Mr. Butler thought it might be possible to arrange that normally the Speaker's decision should be given an hour or two after the motion was put forward.[27] Mr. Butler also undertook to discuss with the Speaker ways in which the more restrictive rulings under the Standing Order might be relaxed.

The outcome of these discussions is as yet unknown. Some relaxation may be possible; and although the fact may be coincidental it should perhaps be noted that in the past eighteen months (October 1958–March 1960) of the nine attempts to invoke the Standing Order (all by Labour Members, of course) two have been accepted, more than in the previous four years. But I think that although the Parliamentary environment may now be congenial to some slight relaxation, no substantial increase of successful motions is likely so long as the need for a firm timetable remains. If the rule were relaxed very much it would be possible for an Opposition, or a small, active clique of Members, to upset Government business quite easily. If, for example, many of the forty-five urgency motions put forward by Opposition Members from 1951–54 had been accepted business would have been seriously hindered. In addition, if any substantial success had been obtained in these cases the number of attempts would certainly have increased. There is no doubt that others on both sides of the House would have followed the example of the small group of specialists in the use of this procedural device; and the situation would have become most difficult for the Government. Substantially to

[26] On February 8, 1960. The section of Mr. Butler's speech dealing with S.O. No. 9 is at H.C. Deb., 5s., 617, c. 150–154; *cf.* c. 161–164. During this debate the Government also announced that in future incidental reference to legislation would be allowed in an adjournment debate (*ibid.* c. 142; *cf.* c. 598). This new rule makes debate on a successful motion potentially wider in scope but does not affect the application of the S.O. in the first instance.

[27] A little while before, Mr. Speaker Hylton-Foster had taken the unusual step of deferring his decision and had actually delayed it for four days, including a weekend (H.C. Deb., 5s., 614, c. 1397; 615, c. 38–40).

relax the rule would be to make obstruction not only possible but easy—unless, of course, it was not in fact employed so much or so captiously as I here anticipate. And this means that in order that the rule shall not fall almost entirely into desuetude, and in order that the possibility of its more frequent use may arise, a great degree of self-restraint is necessary on the part of Members, in particular those Labour backbenchers who are prone excessively and futilely to attempt its use.

It is undoubtedly desirable that urgency motions should be possible, that provision should be made in Standing Orders to give an element of flexibility to the House's programme. But it is clear that so long as the present pressure on Parliamentary time keeps up and so long as attempts to move the adjournment in this way are largely confined to Opposition Members—indeed to a small group on one side of the House—then no considerable reversal of the decline in the availability of urgency motions is to be anticipated. Standing Order No. 9 is naturally an instrument which the Government's critics will always try to use. But, paradoxically, its successful invocation is only likely to become more frequent if attempts to use it are made less often.

CURRENT SURVEY

PAGE
United Kingdom 285
Commonwealth and Dependent Territories 305

This digest, which has been compiled by the Editor and G. J. Borrie, Barrister-at-law, covers the period from April 1, 1960, to June 30, 1960.

UNITED KINGDOM

Compulsory Purchase

Compensation

Business premises were held on a lease for twenty-one years expiring on October 11, 1954. A notice to treat under a compulsory purchase order was served by the local authority on the tenants in 1949, but no further action was taken by either side. In March 1957 the tenants claimed compensation and in May 1957 the local authority caused the freehold to vest in themselves and later the same year served on the tenants a notice to quit under the Landlord and Tenant Act, 1954, expiring on October 11, 1958. The tenants gave a counter-notice requiring a new lease, but the matter proceeded no further. In May 1958 the tenants applied to the Lands Tribunal to determine compensation under the Acquisition of Land (Assessment of Compensation) Act, 1919. *Held*, that the material date for assessing compensation was either March 1957 or May 1958, and on neither of those dates had anything been acquired by the local authority pursuant to the notice to treat, accordingly no compensation was payable: Holloway *v.* Dover Corporation [1960] 2 All E.R. 193, C.A.

Courts

Judicial and legal appointments

Scotland. On May 10, 1960, the Lord Advocate gave a list of the judicial and legal appointments made by him or on his recommendation (623 H.C. Deb. 172–173).

Legal aid and advice

Account has been published of the receipts and expenses of the Law Society paid into and out of the Legal Aid Fund, 1958–59, together with the report of the Comptroller and Auditor-General thereon (H.C. 197 of 1959–60), and of the receipts and expenses of the Law Society of Scotland paid into and out of the Legal Aid (Scotland) Fund, 1958–59, together with the report of the Comptroller and Auditor-General thereon (H.C. 166 of 1959–60).

The Legal Aid Act, 1960 (8 & 9 Eliz. 2, c. 28), received the Royal Assent on April 13, 1960. Section 1 (1) provides that legal aid shall be available for any person whose disposable income does not exceed £700 a year or such larger yearly figure as may be prescribed instead of the present limit of £420; the proviso to section 2 (1) of the Legal Aid and Advice Act, 1949 (12, 13 & 14 Geo. 6, c. 51), under which a person with disposable capital of more than £500 may be refused legal aid, is unchanged but power is given to prescribe a larger figure; section 1 (2) provides that the contribution from an assisted person may include one-third of the amount by which his disposable income exceeds £250 a year or such larger yearly figure as may be prescribed instead of half of the amount by which his disposable income exceeds £156 as at heretofore, and the amount by which his disposable capital exceeds £125 or such larger figure as may be prescribed instead of the amount by which his disposable

capital exceeds £75 as at present; the qualification for legal aid in matters not involving litigation under section 5 (5) of the 1949 Act is tied to these revised figures; regulations as to limits are to be made by statutory instrument subject to affirmative resolution in each House of Parliament (section 1 (3)); section 1 (4) contains transitional provisions; section 2 enables regulations to be made for the remuneration of persons giving legal aid to be increased from the present figure of 85 per cent. of the amount allowed on taxation; section 3 provides for the remuneration of persons acting in Scotland for applicants for legal aid in certain cases; section 4 makes it clear that " payments " under the 1949 Act can be made by way of an allowance on account or otherwise; section 5, short title, etc.

The Legal Aid and Advice Act, 1949 (12, 13 & 14 Geo. 6, c. 51), and this Act may be cited together as the Legal Aid and Advice Acts, 1949 and 1960, and the Legal Aid (Scotland) Act, 1949 (12, 13 & 14 Geo. 6, c. 63), and this Act may be cited together as the Legal Aid (Scotland) Acts, 1949 and 1960.

The Act, which does not extend to Northern Ireland, came into force on April 13, 1960.

Legal Aid and Advice Regulations. A motion to annul the Legal Aid (General) Regulations, 1960 (S.I. 1960 No. 408) was debated in the House of Commons on May 2, 1960. The motion was by leave withdrawn (662 H.C. Deb. 829–843; see also above p. 190).

On May 25, 1960, the House of Lords discussed the question of legislation to enable a defendant in a civil action in which the plaintiff was receiving legal aid himself to receive legal aid (223 H.L. Deb. 1216–1218).

The Legal Advice (Amendment) Regulations, 1960, relax the financial conditions on which legal advice is available under section 7 of the Legal Aid and Advice Act, 1949. In future it will be available to those who have not more than £125 capital (instead of £75) and an income (after certain deductions) of not more than £7 10s. in the week preceding the application for legal advice (instead of £4 10s.) (S.I. 1960 No. 729).

The Legal Aid (General) (Amendment) Regulations, 1960, relax the financial conditions for legal aid in matters not involving litigation under section 5 of the Legal Aid and Advice Act, 1949. In future it will be available to those who have a disposable capital not exceeding £125 (instead of £75) and a disposable income not exceeding £390 (instead of £234); and in determining the disposable capital certain deductions will be made in respect of dependants living with the applicant. The regulations also clarify the grounds upon which this form of legal aid may be refused and the information which may be furnished to an Area Committee to enable them to consider whether to discharge a civil aid certificate. The period within which an assisted person's opponent may file an affidavit of his own means is extended up to the judgment instead of, as hitherto, up to the hearing (S.I. 1960 No. 730).

The Legal Aid (Scotland) (General) (No. 5) Regulations, 1960, amend the Legal Aid (Scotland) (General) Regulations, 1950, by substituting references in general terms for references to the figures £420 (being the maximum disposable income which makes legal aid available to an applicant) and £500 (being the level of disposable capital beyond which legal aid may be refused) wherever they appear (S.I. 1960 No. 725).

The Legal Aid (Scotland) (section 5) Amendment Regulations, 1960, relax the financial conditions of legal aid in matters not involving litigation under section 5 of the Legal Aid (Scotland) Act, 1949. Legal aid of this kind will in future be available to persons having disposable capital of not more than £125 (instead of £75) and disposable income of not more than £390 (instead of £234). There will be new capital allowances of £75 for the first dependant, £50 for the second dependant and £25 for each further dependant and the income allowances will be increased to £117 (instead of £78) for a spouse or adult dependant and £70 (instead of £65) for a child. The assisted person's

maximum contribution will now be one-third of his disposable income in excess of £315 (S.I. 1960 No. 756).

The Legal Advice (Scotland) Amendment Regulations, 1960, relax the financial conditions upon which oral legal advice is given under section 7 of the Legal Aid (Scotland) Act, 1949. Legal advice will in future be available to persons having capital of not more than £125 (instead of £75) and income of not more than £7 10s. (instead of £4 10s.) in the week preceding the application for legal advice. The income allowances will be increased to £2 5s. for a spouse or adult dependant and £1 7s. for a child (S.I. 1960 No. 757).

Legal Aid in Criminal Proceedings. The report of a Committee appointed by the Secretary of State for Scotland (chairman: The Hon. Lord Guthrie) on Legal Aid in Criminal Proceedings has been published (Cmnd. 1015).

Reports. The 9th Report of the Law Society of Scotland on the Legal Aid Scheme, 1958–59, has been published by the Scottish Home Department (H.M.S.O. 49–373–9).

Education

Primary schools

On May 9, 1960, the House of Commons in Committee of Supply debated the condition of primary schools (623 H.C. Deb. 38–106).

Teachers

On May 9, 1960, the House of Commons debated the position of mathematics teachers (623 H.C. Deb. 150–170).

Universities

Grants to Students. The Report of the Committee (chairman: Sir Colin Anderson) has been published (Cmnd. 1051). The Minister of Education stated that the Government's decisions would be announced as soon as possible (624 H.C. Deb. 1606–1609, June 2, 1960).

Higher Education. On May 11, 1960, the House of Lords debated University and other higher education (223 H.L. Deb. 615–732).

Wales

The report of the Central Advisory Council for Education (Wales) (chairman: A. Oldfield-Davies) on Education in Rural Wales has been published (H.M.S.O. 27–339).

Youth service

Albemarle Report. On May 18, 1960, the House of Lords debated the youth service, with special reference to this report (223 H.L. Deb. 935–1052; see also above, pp. 191–194).

Government Functions and Appointments

Civil Service

Staffs employed. A statement has been issued showing the numbers of civil servants employed in government departments on April 1, 1960, as compared with April 1, 1959. It shows a total of 637,374 (including 254,919 Post Office staffs) on the later date, which is an increase of 4,449 (Cmnd. 1058; for previous statement, see [1959] P.L. 311).

Council on Prices, Productivity and Incomes

In a written reply on May 16, 1960, the Chancellor of the Exchequer made a statement about the future of the Council on Prices, Productivity and Incomes. The council, an independent advisory body composed of three members, was appointed by the Government in August 1957, with the following terms of reference:

"Having regard to the desirability of full employment and increasing standards of life based on expanding production and reasonable stability of prices, to keep under review changes in prices, productivity and the level of incomes (including wages, salaries and profits) and to report thereon from time to time."

The Chancellor said: "The Government consider that these reports contributed to a greater public awareness of the basic issues involved in the field of prices, productivity and incomes; and they believe that there is continuing scope for further studies and advice in these matters from an authoritative body independent of Government. It has, therefore, been decided that the council should be reconstituted, and we have been fortunate in securing the services of Lord Heyworth as the new chairman. Sir Harold Howitt, who was a member of the council from its inception, has informed me that, in his view, rotation of membership is desirable and he is, therefore, retiring; his place will be taken by Sir Harold Emmerson. Professor E. Phelps Brown has agreed to continue to serve as a member. The terms of reference will be unchanged. 'Owing to the number of commitments which Lord Heyworth had accepted before he was invited to undertake this task, he will not be able to take up the chairmanship before the end of September. Accordingly, the new council will start its work at the beginning of October. The timing of reports will be a matter for the council itself." (623 H.C. Deb. 96–97.)

Industrial development

The Ministry of Housing and Local Government has issued a circular referring to the provisions in the Local Employment Act, 1960, relating to the control of industrial development. Areas of high employment (now to be known as development districts) will continue to have first priority in the steering of industry, but consistently with their overall responsibility the Board of Trade will continue to do all they can to steer industry to overspill areas. The circular contains notes on provisions in the Local Employment Act relating to industrial development certificates (Circular No. 32/60).

Inland Revenue Commissioners

Account of the National Land Fund, 1958–59, has been published, together with the report of the Comptroller and Auditor General thereon (H.C. 149 if 1959–60).

Inspectorate

Alkali. The 96th annual report has been published on Alkali, etc., Works by the Chief Inspectors, 1959 (H.M.S.O. 75–18–0–59).

Mines. The reports have been published of H.M. Inspectors of Mines and Quarries, 1959, of the North-Eastern Division, South-Western Division, Durham Division and North-Western Division (H.M.S.O. 41–28–3–59, 41–28–7–59, 41–28–6–59 and 41–28–5–59).

Police. The report has been published of H.M. Inspector of Constabulary for Scotland, 1959 (Cmnd. 1046).

Ministers' functions

Agriculture. On May 16, 1960, the House of Commons debated agriculture in Committee of Supply (623 H.C. Deb. 924–1056).

The report has been published of the Department of Agriculture for Scotland, 1959 (Cmnd. 1028).

Education. The report of the Secretary of State for Scotland has been published on Education in Scotland, 1959 (Cmnd. 1018).

Health. The report has been published of the Department of Health for Scotland, 1959 (Cmnd. 983).

Housing and Local Government. The report has been published of the Ministry of Housing and Local Government, 1959 (Cmnd. 1027).

On May 2, 1960, the House of Commons debated the Ministry of Housing and Local Government in Committee of Supply (622 H.C. Deb. 700–828).

Labour. The annual report of the Ministry of Labour, 1959, has been published (Cmnd. 1059).

Research

Department of Scientific and Industrial Research. The report of the Research Council, 1959, has been published (Cmnd. 1049).

Highways

Obstruction by local authority

A highway authority acquired a strip of land beside a road and widened it. In doing so they extended a culvert not only on to the strip but beyond it on to the adjacent land. They left the entrance to the culvert uncovered and unprotected. Later the entrance became blocked by debris and as a result water overflowed on to the plaintiff's land. *Held*, that both the highway authority and the adjacent occupier were liable for the damage caused to the plaintiff's land, the one for creating a potential nuisance and the other for continuing it: Pemberton *v.* Bright and the Devon County Council [1960] 1 W.L.R. 436; [1960] 1 All E.R. 792, C.A. (applying *Sedleigh-Denfield* v. *O'Callaghan* [1940] A.C. 880).

Repair

A highway authority carried out drainage works on a highway which they had taken over. They were properly carried out and improved the road, but it still flooded in heavy rain and part of it tended to keep damp. The authority put out warning flags or lamps when there was danger of flooding. One frosty night the plaintiff's car skidded on ice on the road and it was damaged and he was injured. The ice was not due to flooding but to the continuing dampness. *Held*, that the local authority was not liable to the plaintiff because (i) the continuing dampness flowed from non-feasance, not misfeasance on their part, and (ii) there was no duty to warn motorists of the danger of ice: Burton *v.* West Suffolk County Council [1960] 2 W.L.R. 745; [1960] 2 All E.R. 26, C.A. (distinguishing *McClelland* v. *Manchester Corporation* [1912] 1 K.B. 118; and applying *Sheppard* v. *Glossop Corporation* [1921] 3 K.B. 132).

Inquiries

Transport

Air. The reports have been published of the inquiries on (a) the accident to Britannia G-ANCA on November 6, 1957, at Downend, Bristol (C.A.P. 162); (b) the accident to DH 104 Dove G-ALEC on May 6, 1959, near Maindy Stadium, Cardiff, Wales (C.A.P. 163); (c) the accident to Britannia G-AOVD on December 24, 1958, at Sopley Park, Christchurch, Hants (C.A.P. 164).

Railway. The reports have been published on (a) the accident on September 15, 1959, at Stobswood Occupation level crossing (January 5, 1960); (b) the collision on October 15, 1959, near Manchester (January 18, 1960); (c) the collision on November 4, 1959, at West Sleekburn; (d) the derailment on November 20, 1959, near Balnagurd Halt (February 5, 1960); (e) the collision on November 12, 1959, at East Ham (February 25, 1960); (f) the double collision on January 28, 1960, at Borough Market Junction (March 14, 1960); (g) the collision on November 23, 1959, at Slade Lane Junction, Levenshulme (March 1, 1960).

Local Government

Finance

Rating and Valuation. Section 3 of the Valuation for Rating Act, 1953, provides that a "dwelling-house" means a hereditament used wholly for the purpose of a private dwelling or private dwellings, and by section 3 (2) "a hereditament which is used for the letting of rooms singly for residential purposes shall be deemed not to be used for the purposes of a private dwelling or

private dwellings if the whole, or substantially the whole, of the available accommodation is used for such lettings." "Available accommodation" is defined as "so much of the accommodation . . . as is suitable for being used for the letting of rooms singly for residential purposes."

The ratepayer occupied five of the twelve rooms in a house, the other seven rooms being let individually for residential purposes. *Held* that, excluding the dining-room, seven out of eleven rooms did not amount to "substantially the whole" of the available accommodation and, therefore, the premises were rateable as a "dwelling-house" within section 3: WALLS *v.* PEAK [1960] 2 W.L.R. 840; [1960] 2 All E.R. 81, C.A. (reversing decision of Lands Tribunal).

In PEAK *v.* BURLEY GOLF CLUB; HARDING *v.* BRAMSHAW GOLF CLUB (March 31, 1960) the Court of Appeal (Lord Evershed M.R., Pearce and Harman L.JJ.) *held*, allowing appeals from the Lands Tribunal, that golf courses which were situated in the New Forest were not lands which were in rateable occupation, since the clubs did not have the exclusive right to construct courses and to play upon them: [1960] 1 W.L.R. 568.

Whether or not work carried on in a hereditament is done for the purpose of gain, while relevant in considering whether the hereditament is a factory, is of no materiality in determining whether it falls within the proviso to section 3 (1) of the Rating and Valuation (Apportionment) Act, 1928.

A research establishment in which the construction and testing of prototype vehicles and the making and testing of parts to go with those vehicles was carried on, was found by the Lands Tribunal to be premises where work was done for the purpose of finding out whether an idea was good and practical. It was conceded that the premises were a factory within section 149 (1) of the Factory and Workshop Act, 1901. *Held*, that the hereditament was primarily occupied and used for a purpose which was not a factory purpose and accordingly was not an industrial hereditament within section 3 (1): HARRY FERGUSON RESEARCH *v.* DAWKINS; SAME *v.* WARWICK R. D. C. [1960] 2 All E.R. 283, C.A. (reversing decision of Lands Tribunal, applying *Grove* v. *Lloyd's British Testing Co.* [1931] A.C. 450).

Housing

On May 4, 1960, the House of Commons gave leave for the introduction of a Bill to provide security of tenure for tenants of local authorities and others (622 H.C. Deb. 1088–1092).

London

The Minutes of Evidence of the Royal Commission on Local Government in Greater London have been published for Day 70 (H.M.S.O. 73–35–70).

MONOPOLIES AND RESTRICTIVE PRACTICES

Monopolies Commission

On June 21, 1960, the Earl of Dundee, speaking for the Government, commented on criticisms made by the Chairman of Imperial Chemical Industries of the working of the Commission (224 H.L. Deb. 402–405).

Restrictive Practices Court

Decisions. 58 of the carpet manufacturers in the country were members of the Federation of British Carpet Manufacturers, the other 14 were not. It was a flourishing industry. Members of the federation agreed to abide by the Standards of Trading, though they could contract out. The standards provided (among other things) (1) that the wholesale discounts should only be allowed to the 193 substantial wholesalers on the federation's List of Houses; (2) that carpets of certain defined standards should not be sold to retailers at less than the prices fixed by the federation; (3) that the wholesalers should not sell direct to consumers; and (4) that carpets should not be sold for less overseas than they would be at home. *Held*, (i) the restriction at (1) was contrary to the public interest because of reduced competition amongst wholesalers which

would have spurred on those on the list; (ii) the minimum prices were contrary to the public interest and their removal would not deny the public any benefit within section 21 (1) (*b*) of the Restrictive Trade Practices Act, 1956, because the prices were arbitrarily fixed, retailers should learn to distinguish standards of carpets for their customers. Stability of prices in a buoyant industry conferred no benefit, and removal of the standards of quality and price would not debase quality and would produce a greater variety of carpets at lower prices; (iii) the restriction at (3) above was contrary to section 21 (1) (*b*) of the Act; (iv) the restriction at (4) above was not (on the facts) within section 21 (1) (*f*) of the Act because the federation led no evidence that on its removal exports would drop: *Re* Federation of British Carpet Manufacturers' Agreement [1960] 1 W.L.R. 356; [1960] 1 All E.R. 356, R.P. Ct.

In 1956, following the removal of price control on bread, a federation of bakers recommended to its members fixed retail prices for standard loaves. In 1958, following a reference of the federation's agreement to the Restrictive Practices Court, the federation adopted a memorandum which incorporated a formula to regulate price recommendations. One resolution in the memorandum stated that the federation could at any time discontinue the making of recommendations as to prices, but that, if a recommendation was made, each member, while free to charge less than the maximum retail price recommended should not charge more. *Held*, (1) that the restrictions were deemed by section 21 (1) of the Restrictive Trade Practices Act, 1956, to be contrary to public interest; (2) that notwithstanding that the restrictions were contained in recommendations and not in clauses of an agreement, section 6 (7) of the Act was applicable, since that provision introduced a statutory fiction, and that, accordingly, the provisions of section 21 of the Act as to the burden of proof applied fully and without modification: *Re* Federation of Wholesale and Multiple Bakers' (Great Britain and Northern Ireland) Agreement [1960] 1 W.L.R. 393; [1960] 1 All E.R. 227, R.P.Ct.

By an agreement between the members of the Phenol Producers' Association the selling price of phenol (carbolic acid) was fixed. Phenol was used as a raw material chiefly in the plastic and pharmaceutical industries and was extracted from coal tar. The association's argument, on a reference under section 21 (1) (*b*) of the Restrictive Trade Practices Act, 1956, in support of its price fixing scheme was that there was an excess of supply over demand which would cause a fall in the price of phenol which would cause the tar producers to sell their tar for fuel rather than for distillation. Evidence of a tar producer did not support this suggested trend. *Held*, that the restriction was contrary to public interest: *Re* Phenol Producers' Agreement [1960] 1 W.L.R. 464; [1960] 2 All E.R. 128, R.P.Ct.

References: The Attorney-General has stated that on January 1, 1960, there were registered with the Registrar 1,455 Agreements which had not been dealt with by the Court. Notices of Reference were on May 31, 1960, pending before the Court in respect of 45 of these. (624 H.C. Deb. *116–117*, May 31, 1960.)

National Health Service

Accounts

Summarised Accounts of Regional Hospital Boards, Boards of Governors, Hospital Management Committees, Executive Councils and the Dental Estimates Board for England and Wales for 1958–59, have been published, together with the Report of the Comptroller and Auditor-General thereon (H.C. 147 of 1959–60).

Similar accounts for the Scottish authorities have also been published (H.C. 148 of 1959–60).

Drugs

The report has been published on the Definition of Drugs by the Standing Joint Committee of the Central Health Services Council and the Scottish

Health Services Council on Classification of Proprietary Preparations (May 27, 1959).

Remuneration

Royal Commission. On April 11, 1960, the Minister of Health stated that the Government accepted the Commission's recommendations as a whole as they stood, provided that the doctors and dentists respectively for their part were ready to accept them on the same basis (621 H.C. Deb. *83–48*; see also *164–165*, April 14, 1960).

On April 27, 1960, the House of Lords debated the Report of the Royal Commission (223 H.L. Deb. 92–180).

A further Statistical Appendix has been published as a Supplement to the Report of the Royal Commission (Cmnd. 1064).

Scottish Health Services Council

Report of the Scottish Health Services Council for 1959 has been published (49–412–0–59).

National Insurance

Benefits

The National Insurance (Unemployment and Sickness Benefit) Amendment Regulations, 1960, which amend the National Insurance (Unemployment and Sickness Benefit) Regulations, 1948, relate to the conditions under which a person may be entitled to unemployment benefit despite the fact that he is following a subsidiary occupation. The Regulations vary the wording of one of the conditions, which describes the nature of the occupation, and make it clear that it need not be satisfied if the occupation is not followed under a contract of service. (S.I. 1960, No. 781.)

Classification

The National Insurance (Classification) Amendment Regulations, 1960, amend the National Insurance (Classification) Regulations, 1948, by including among the employments in respect of which persons are treated as employed persons employment as a master or registrar of the Supreme Court of Judicature (including employment as a district registrar) or as a whole-time county court registrar. They apply to assistant masters and registrars but not to deputies for persons holding any of these offices (S.I. 1960, No. 827).

The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations has also been published (H.C. 193 of 1959–60).

Contributions

A report has been published of the National Insurance Advisory Committee (Chairman: Sir Ifor Evans) on the preliminary draft of the National Insurance (Assessment of Graduated Contributions) Regulations, 1960 (H.C. 213 of 1959–60).

A report has been published of the National Insurance Advisory Committee on the preliminary draft of the National Insurance (Collection of Graduated Contributions) Regulations, 1960 (H.C. 214 of 1959–60).

The National Insurance (Contributions) Amendment Regulations, 1960, which amend the National Insurance (Contributions) Regulations, 1948, relate to the conditions under which a person may be excepted from liability to pay, and may be credited with, a contribution for a week of unemployment despite the fact that he is following a subsidiary occupation. The Regulations vary the wording of one of the conditions, which describes the nature of the occupation, and make it clear that it need not be satisfied if the occupation is not followed under a contract of service. (S.I. 1960, No. 782.)

The report of the National Insurance Advisory Committee on the preliminary drafts of both these sets of Regulations has also been published (H.C. 183 of 1959–60).

Debate

On April 13, 1960, the House of Commons debated retirement pensions in Committee of Supply (621 H.C. Deb. 1290–1342) and on May 20, 1960, the House debated old-age pensions (623 H.C. Deb. 1653–1740).

Decisions

Child's Special Allowance. The claimant's former husband contributed towards the maintenance of her two children, in cash or kind, until he became unemployed just over four months before he died. Although, as it transpired, he was a very sick man, he obtained employment during about eight weeks of that time. He was then admitted to hospital and died six weeks later. *Held,* that there was a temporary and involuntary cessation of contributions from the time that the deceased became unemployed. The period from his admission to hospital to his death should be disregarded. Prior to that he had been ill for a long time, but his condition was not so hopeless that there were no prospects of future contributions towards the children's maintenance. In averaging his contributions to determine the weekly rate of the allowance the weeks when no contributions were made should be excluded: Decision No. R(G) 15/59.

Claimant divorced from her husband at the time of his death. An order for interim alimony for herself and two children made when she instituted divorce proceedings had never been complied with. After the divorce her husband agreed to pay her half the net profits of the sale of a house he had bought in her name and half the surrender value of a life policy and enter into covenants to pay £5 a year for herself and £50 a year for each child. The husband died before the deeds of covenant were agreed or the sale of the house completed. After his death claimant was paid over £200 from sale of the house. *Held,* that she was entitled to child's special allowance at the full rate. The fact that the deeds of covenant were not signed and the payment was not made until after his death did not preclude her from attributing the sum to the discharge of her husband's undertaking to maintain her children where he had done everything in his power, before his death, to ensure that she received that sum. By virtue of regulation 5D of the National Insurance (General Benefit) Regulations, 1948, the whole of the payments could be aggregated for the purpose of determining the weekly rate of benefit: Decision No. R(G) 17/59.

Home confinement grant. A claimant for home confinement grant who had arranged to be confined at home, was admitted to a National Health Service hospital as an emergency case on Thursday, May 14, 1959. She was confined there on Wednesday, May 20, 1959, discharged later the same day. She contended that, as sickness benefit was not payable for a Sunday, that day should not be counted when calculating the number of days she was in hospital and that she was therefore discharged from hospital on the fifth day after the date of her admission. *Held,* that her confinement could not be treated as if it had not taken place in a National Health Service hospital. There was no provision in the National Insurance Act or regulations governing entitlement to home confinement grant that a Sunday should be disregarded in computing a period spent in hospital: Decision No. R(G) 16/59.

Late-age entrant. The claimant entered insurance on July 5, 1948. Being then over 55 years of age he could not acquire title to a retirement pension when he became 65 in 1957 nor before July 5, 1958, at which date he was deemed, for the purpose of retirement pension only, to have attained pensionable age and to have retired from regular employment. He continued in his employment after July 5, 1958, and claimed sickness benefit for the period from December 19, 1958, to January 16, 1959. In February 1959 he claimed and established title to a retirement pension from August 25, 1958, but the pension did not become payable because it was extinguished by earnings. *Held,* that he was not entitled to sickness benefit as he was not a person who, under section

26 (1) of the National Insurance Act, 1946, would have been entitled to a retirement pension on attaining pensionable age had he retired and made the necessary claim. Principles of Decision C.S. 658/49 (K.L.) applied: Decision No. R(S) 13/59.

Misconduct. Part of claimant's duty on night shift was to attend to frost fires. It was alleged that on one night he allowed them to go out. The claimant admitted that one fire had gone out during the night but said he had rekindled it immediately. The only evidence of the alleged neglect was given by the manager of the works, but he came on duty at 8.30 a.m. and the claimant had finished at 6 a.m. No evidence, either written or oral, was obtained from the man who took over duty from the claimant. *Held*, that misconduct had not been proved. The onus of proving misconduct is on those who allege it, and it must be clearly proved. When the claimant denies the allegations it is desirable that the most direct evidence should be adduced: Decision No. R(U) 2/60.

Period covered by claim on medical certificate. Claimant's doctor issued an intermediate medical certificate on form Med. 2A on December 1, certifying incapacity to that date. The claimant signed the claim part of the form on December 2 and posted it to the local office where it was received on December 6. He later submitted a claim on a final certificate, covering the period to December 6, which was received outside the prescribed time limit. The claimant had been disqualified for receiving benefit from and including December 2 on the ground that he had not shown good cause for the delay in claiming. *Held*, that the form signed by the claimant on December 2 was a valid claim for that day, that the claim was deemed to have been made on the date the form was posted (assumed to be before December 6) but that it could not constitute a claim for any days after the day on which it was signed. Disqualification upheld for the period December 3 to 6: Decision No. R(S) 1/60.

Trade dispute. An "odd plater" at a shipyard lost his employment as a result of the withdrawal of labour by apprentices and "jobbing platers" in pursuance of a trade dispute about the wage rates of the latter. "Platers" were classifiable for certain purposes into a number of groups, among which there was a high degree of interchangeability. Differences in skills were recognised by differences in wage rates. An alteration in the wage rate of any one group would lead, virtually automatically, to consequential alterations for the other groups. *Held*, that in order to determine what "grade or class of workers" the claimant belonged to, it was necessary to consider who were the persons to whom the dispute in question related. In this case the grade or class, as so determined, comprised all categories of platers. The claimant, therefore, could not show that no member of the grade or class to which he belonged was participating in or directly interested in the trade dispute which caused the stoppage of work: Decision No. R(O) 34/59.

Doctors' and Midwives' Certificates

A report has been published of the National Insurance Advisory Committee (Chairman: Sir Ifor Evans) on the question of Doctors' and Midwives' Certificates for National Insurance purposes (Cmnd. 1021).

Report

The report by the Government Actuary on the Second Quinquennial Review into the operation of the National Insurance scheme has been published (H.C. 220 of 1959–60).

National Insurance (Industrial Injuries)

Decisions of the Commissioners and the Tribunal

Abdominal cancer. The claimant's husband was struck on the right groin by a steel plank. A month later he was admitted to hospital and was found to have a tumour in the right side of the abdomen. At operation, carcinoma of the caecum, which could not be removed, was revealed. He died five months

later. *Held*, that there was no probable connection between the death and the relevant injury. The probability that the growth of the cancer, which clearly had existed before the accident, had been accelerated by the injury presupposed a relationship between injury and cancer of an abdominal viscus which a specialist had stated to be unknown to his knowledge: Decision No. R(I) 6/60.

"*Fresh evidence.*" A Scottish miner suffered a minor industrial accident and eight days later was found drowned. The Association, of which the deceased had been a member and who had throughout acted for the claimant's widow, sought to have the Commissioner's decision that death did not result from the accident reviewed and produced letters from two psychiatrists which they alleged were "fresh evidence." *Held*, (1) These letters were not "fresh evidence" since they were in the hands of the Association's agents (their solicitors) before the Commissioner gave the decision which it was sought to have reviewed and, in the circumstances of this case, the claimant (or her advisers) could reasonably have been expected to produce this evidence, or evidence to the like effect, prior to that decision. (2) Even had the letters constituted "fresh evidence" they did not show that the Commissioner's decision had been given in ignorance of, or was based on a mistake as to, a material fact. They were opinions representing inference drawn from certain hypotheses of fact, which inferences were controversial and, in particular, they were based on the assumption that the deceased had committed suicide, whereas on the known facts the presumption against suicide had not been rebutted. (3) "Fresh evidence" has the same meaning in Scottish as in English law and while suicide is not a crime in Scotland there is a presumption against it: Decision No. R(I) 47/59.

Hip injury. The claimant slipped on a steel plate and injured his left hip. Seven days later he was admitted to hospital and found to be suffering from tuberculosis of the trochanteric bursa. *Held*, that it was not probable that the tuberculous condition was either caused or materially aggravated by the accident. Medical evidence was given that tuberculosis of bone or of bursae is almost always a secondary manifestation, the primary focus being usually in bronchial or mesenteric glands. Injury may determine the site of the secondary manifestation but can be excluded as a causal factor when the initial symptoms occur less than a month or more than six months after the injury. Distinction drawn between "accentuated," *i.e.*, threw into prominence, and "aggravated," *i.e.*, "made worse"; Decision No. R(I) 11/60.

"*Out of and in the course of employment.*" A Civil Service executive officer attended a meeting of a sub-branch of a Staff Association of which he was secretary. The meeting was held outside office hours but on the premises where the claimant was employed and with the consent of the manager of the office. Members employed at other offices attended and the meeting was concerned with matters of general interest to executive officers. The manager had entrusted the claimant with the keys and had made him responsible for switching off the lights and locking up. Whilst so doing, he tripped and was injured. *Held*, that the accident did not arise out of and in the course of the claimant's employment. In switching off the lights and locking up the office the claimant was acting in his capacity as secretary of the sub-branch and not in his capacity as an executive officer. The meeting, which related to the attitude which executive officers should take to general matters of interest to them, was not something incidental to the claimant's employment. Decision R(I) 63/51 distinguished: Decision No. R(I) 46/59.

Agricultural worker while walking across a field in course of his employment was struck by lightning and killed. *Held*, that the accident did not arise out of his employment because his employment did not expose him to a greater risk of being struck by lightning than any other person within the area of the storm. R(I) 12/56 and R(I) 23/58 considered: Decision No. R(I) 7/60.

On January 7, 1959, a dock worker was employed by a firm at M.B. wharf. On his way out of the docks for lunch he called at B. wharf to check the

amount due to be paid to him the following day for work he had done at B. wharf for another firm on December 31, 1958. While waiting to see the ganger on B. wharf he met with an accident. *Held*, that the accident did not arise out of and in the course of the claimant's employment. The sphere of his employment on January 7, 1959, was M.B. wharf and not the docks area as a whole, and when he left M.B. wharf he took himself out of the sphere of his employment. On the facts, the inquiries which the claimant intended to make at B. wharf on January 7, 1959, were not reasonably incidental to his employment at B. wharf on December 31, 1958: Decision No. R(I) 8/60.

A factory hand at a paint manufacturers went to the toilet to relieve nature and to smoke a cigarette. The employers allowed breaks for smoking, which was not allowed when actually on the job because of the inflammatory nature of the materials. The claimant's hands had been immersed in inflammatory liquid, and while lighting his cigarette his wrists caught fire. *Held*, that although the accident arose in the course of the employment it did not arise out of it. The act of smoking was for the claimant's own pleasure and not for the furtherance of his employment. Decision R(I) 68/52 was indistinguishable: Decision No. R(I) 9/60.

Pneumoconiosis. A former coal miner holding a certificate of partial disablement issued by the Silicosis Medical Board died following a cerebral haemorrhage. *Held*, that it had not been proved that death probably resulted from pneumoconiosis. It was improbable that any anoxia due to pneumoconiosis played any part in weakening the wall of the cerebral artery, and coughing did not play a material part in causing the haemorrhage to occur when it did occur: Decision No. R(I) 41/59.

The deceased, who had been a boiler scaler for many years, died suddenly and the cause of his death was certified after post mortem as due to "(a) congestive heart failure" and (b) boiler scalers' pneumoconiosis. *Held*, that it was more likely that the deceased's death resulted from coronary ischaemia and that the condition of the lungs would not have caused the sudden failure of the heart muscle. Also, that in the present state of medical knowledge it is not possible to say that the balance of probabilities favours the view that the presence of pneumoconiosis is a contributory factor in the causation of arteriosclerosis of the coronary arteries: Decision No. R(I) 1/60.

The deceased had been a coal miner for 35 years up to three years preceding death, but had not claimed to be suffering from pneumoconiosis. In the opinion of the pathologist who performed the post mortem the cause of death was cardiac failure due to pulmonary insufficiency and silicosis was a contributory factor. *Held*, that pneumoconiosis played no material part in causing death. The relationship of cardiac and pulmonary conditions with right and left ventricular hypertrophy discussed: Decision No. R(I) 2/60.

Post-war credits. Applicant for repayment of post-war credits under the Post War Credit (Income Tax) Regulations, 1959, had a final assessment of disability due to the relevant condition of 15 per cent. for life, and this had been paid as a gratuity. *Held*, that there could be no title to unemployability supplement, for the claimant was not in receipt of a disablement pension. The Commissioner set out the law concerning decisions on applications for repayment of post-war credits: Decision No. R(I) 48/59.

Prolapsed intervertebral disc. Batman claimed that incapacity due to prolapsed intervertebral disc was caused by wrenching his back while moving a chest of drawers at work some fourteen weeks earlier. *Held*, that the claimant had not proved that he suffered personal injury by industrial accident. If there had been a prolapse of the disc at the time of the incident, it would be most improbable that no more than slight pain in the back would have occurred for some three months: Decision No. R(I) 12/60.

Special hardship allowance. A boy of fifteen sustained an industrial accident while employed as office boy with a view to becoming apprenticed as an armature winder with the same firm at age sixteen. *Held*, that until the boy

was sixteen he would not have been engaged in any tasks which could be regarded as training him for the work of an armature winder, and that if he had a regular occupation at the date of his accident it was that of office boy or clerical worker and the relevant accident did not prevent him from following those occupations. Claim disallowed: Decision No. R(I) 3/60.

A young miner completed a course of training as a coal-face worker, for which he was given a certificate of competence, and, pending the availability of a vacancy as a coal-face worker, was employed as a coal-face material man. Whilst thus employed he suffered an industrial accident which rendered him permanently incapable of work as a coal-face material man. After the accident he worked as a lamp-room attendant and his earnings from this occupation were at least as high as would have been his earnings as a material man. He contended, however, that his regular occupation at the time of the accident was that of trainee coal-face worker and that, but for the effects of the accident, he would have had reasonable prospects of advancement to work at the coal-face in which event his earnings would have been higher than those of lamp-room attendant. *Held*, that his regular occupation was that of trainee coal-face worker and that his prospects of advancement to the coal-face should be taken into account, with the result that he was entitled to special hardship allowance from the date when he would probably have become a coal-face worker. Decision R(I) 2/52 followed and decision R(I) 44/51 distinguished: Decision No. R(I) 4/60.

Travelling to work. A steel erector was injured when the car in which he was travelling to his work site was involved in a collision. The car was driven by the foreman, who charged the claimant 6s. a day. The foreman usually used his own car for the journey but on the day of the accident it was under repair and he was using one which he had borrowed for a few days from one of the two directors of his employing firm. *Held*, that the accident did not arise out of and in the course of the claimant's insurable employment. (1) Section 9 of the Act did not assist the claimant as the foreman was not acting as the employer's agent in driving the claimant to work and the transport was not provided in pursuance of arrangements made with the employer. R(I) 49/53 distinguished.) (2) Section 8 did not assist the claimant because the journey to work was not a part of the claimant's employment and was not therefore within the scope of his employment and section 8 does not extend the scope of a claimant's employment: Decision No. R(I) 5/60.

"*Trigger finger.*" A cleaner knocked her hand at work in June but continued at work until August when she had an operation for "trigger finger" and became incapable of work. *Held*, that her incapacity was the result of a constitutional condition and not of the injury in June. Aetiology of "trigger finger" discussed: Decision No. R(I) 10/60.

Nationalised Industries

General

Advances. On April 7, 1960, the House of Commons debated the general question of Exchequer advances under the Finance Acts (621 H.C. Deb. 697–726).

Other information relating to past advances was given on April 26, 1960 (622 H.C. Deb. 14–17) and May 19, 1960 (623 H.C. Deb. *129–132*).

Capital expenditure. On April 12, 1960, estimates were given of capital expenditure during the next few years (621 H.C. Deb. *114*).

The annual statement on capital investment in the coal, electricity and gas industries was published in April 1960 (Cmnd. 993).

Airways

Account has been published of the sums received by the Minister of Transport and Civil Aviation from the Consolidated Fund and from B.O.A.C. in respect of Interest and Repayment of Advances and of the disposal of these

sums respectively, 1958–59, together with the report of the Comptroller and Auditor-General thereon (H.C. 223 of 1959–60).

Carriage by Air. No offence is committed against section 24 (2) of the Air Corporations Act, 1949, if the flights alleged to be scheduled flights were open only to bona fide members of an association and not to the public as such, even though any member of the public could join the association on paying the subscription.

A travel agency advertised holidays on the Continent including air travel. After bookings had been made the agency had to cancel the arrangements, but in doing so drew attention to the fact that similar holidays were being arranged for members of the International English Language Association (for which they also acted) and suggested that their customers should join that association, which was open to any member of the public, and go on the association's holiday. The agency's customers did so. *Held*, that no offence had been committed because the flights were not open to members of the public as such: D. P. P. *v.* MILBANKE TOURS [1960] 1 W.L.R. 630; 2 All E.R. 467, D.C.

Guarantees. Statements have been issued by the Treasury on loans proposed to be raised by B.E.A. (H.C. 198 of 1959–60) and B.O.A.C. (H.C. 199 of 1959–60).

Atomic Energy

Balance sheet of the United Kingdom Atomic Energy Authority has been published as at March 31, 1959, together with the report of the Comptroller and Auditor-General thereon (H.C. 184 of 1959–60).

Coal

Account has been published of the sums issued out of and received from the Consolidated Fund, and of the sums received from the National Coal Board in respect of interest and repayment of advances and recoupment of Crown expenses and liabilities, and of the disposal of these sums respectively, 1958–59, together with the report of the Comptroller and Auditor-General thereon (H.C. 155 of 1959–60).

Report and accounts of the National Coal Board, 1959, have been published in two volumes (H.C. 191, 192, of 1959–60).

Electricity

Guarantees. Statements have been issued by the Treasury on loans proposed to be raised by the Electricity Council (H.C. 201 of 1959–60), the North of Scotland Hydro-Electric Board (H.C. 203 of 1959–60), and the South of Scotland Electricity Board (H.C. 204 of 1959–60).

Gas

The Gas Act, 1960 (8 & 9 Eliz. 2, c. 27), received the Royal Assent on April 13, 1960. It increases the amount which may be borrowed by the Gas Council and Area Boards under the Gas Act, 1948, and amends that Act with respect to the expenses of the Minister in connection with the testing of gas for compliance with standards prescribed under the Act.

Guarantees. A statement has been issued by the Treasury in respect of loans proposed to be raised by the Gas Council (H.C. 202 of 1959–60).

Transport

Account has been published of the sums received by the Minister of Transport and Civil Aviation from the Consolidated Fund and from the British Transport Commission in respect of interest and repayment of advances, and the disposal of these sums respectively, 1958–59, together with the report of the Comptroller and Auditor-General thereon (HC. 223 of 1959–60).

Advisory Group. On April 6, 1960, the Minister of Transport made a statement in the House of Commons about the group which is to advise the British Transport Commission on its reorganisation. Its composition would, he said,

be as follows: chairman, Sir Ivan Stedeford, chairman and managing director, Tube Investments, Ltd.; members, Mr. C. F. Kearton, joint managing director, Courtaulds; Dr. R. Beeching, technical director, I.C.I., and Mr. H. A. Benson, partner in Cooper Bros., chartered accountants. The Treasury and the Ministry of Transport would also be represented.

The task of the body would be to examine the structure, finance and working of the organisations at present controlled by the Commission and to advise the Minister of Transport and the British Transport Commission, as a matter of urgency, how effect could best be given to the Government's intentions as indicated in the Prime Minister's statement.

In answer to questions, the Minister stressed that the functions of the body would not be executive but purely advisory. The British Transport Commission and the trade unions had not been represented on it, because it was felt that the advice of the Commission and the unions could best be put forward without inhibitions if they were not on the body itself. (621 H.C. Deb. 393–399; see also 222 H.C. Deb. 742–747.)

For further discussion in the House of Commons, see 621 H.C. Deb. 1343–1402, April 13, 1960.

Consultative Committees. Reports have been published for 1959 of the Central Committee, the Committee for Scotland and the Committee for Wales and Monmouthshire (H.C. 174, 175, and 176 of 1959–60).

Guarantee. A statement has been issued by the Treasury in respect of loans proposed to be raised by the Commission (H.C. 205 of 1959–60).

Reports and accounts of the Commission for 1959 have been published in two volumes (H.C. 226, 226-I of 1959–60).

Transport Tribunal. Proceedings have been published in the matter of the application of the British Transport Commission to confirm the British Transport Commission (Passenger) Charges Scheme, 1960; first to eighth days (H.M.S.O. 88–820–1 to 8).

Parliament

Accommodation (House of Commons)

On June 23, 1960, the Speaker announced the appointment of a Select Committee to consider proposals to improve accommodation for Members in the House of Commons set forth in the Minister of Works' Statement of March 31, 1960, and, in particular, the proposal to convert the roof space over the Committee Rooms into office accommodation, and to make recommendations (625 H.C. Deb. 678–679; see also above, p. 207).

Election

On April 13, 1960, the Speaker set out the Certificate and Report from the Judges appointed to try the election petition for the Kensington, North, constituency (621 H.C. Deb. 1287–1289).

Estimates Committee (House of Commons)

Report. The Select Committee has published its Third Special Report on Trunk Roads, Department of Scientific and Industrial Research, and Nature Conservancy (Ministerial Observations) (H.C. 172 of 1959–60).

Offices (House of Lords)

Report. The Second Report from the Select Committee has been published (H.L. (106) of 1959–60).

Privilege

On April 11, 1960, a complaint of privilege was made relating to a report in the *Sunday Express* of a statement said to have been made by Lady Hylton-Foster, the Speaker's wife. On April 12, 1960, the Speaker ruled that the statement did not constitute a prima facie contempt (621 H.C. Deb. 890–891, 1087).

Procedure (House of Lords)

The Select Committee appointed to consider the procedure of the House has presented its First and Second Reports. It recorded its opinion, *inter alia,* that it is undesirable for a Peer to advocate, promote or oppose in the House any Bill or subordinate legislation in or for which he is or has been acting or concerned for any pecuniary fee or reward (H.L. (79) and (100) of 1959–60; see also 223 H.L. Deb. 182–194, April 28, 1960).

Public Accounts Committee (House of Commons)

Report. The Committee has published its First Report (H.C. 219 of 1959–60).

Statutes

Royal Assent. The Legal Aid Act, 1960 (see above, p. 285, the Gas Act, 1960 (see above, p. 298), and the Iron and Steel (Financial Provisions) Act, 1960 (see below, p. 300), received the Royal Assent on April 13, 1960. The Ghana (Consequential Provisions) Act, 1960 (see below, p. 307), received the Royal Assent on June 2, 1960.

Public Authorities

Ancient Monuments Boards

Reports of the Ancient Monuments Boards for England, Wales and Scotland have been published (H.C. 216 of 1959–60).

Forestry Commission

Report for 1958–59 has been published (H.C. 162 of 1959–60).

Herring Industry Board

Report for 1959 has been published (Cmnd. 1050).

Historic Buildings Council

Reports for 1959 have been published for England, Scotland and Wales (H.C. 185, 186 and 187 of 1959–60).

Iron and Steel

Iron and Steel Board Report for 1959 has been published (H.C. 217 of 1959–60).

The Iron and Steel (Financial Provisions) Act, 1960 (8 & 9 Eliz. 2, c. 26), received the Royal Assent on April 13, 1960. It authorises payment out of the Consolidated Fund of loans to be made for capital purposes by the Minister of Power in pursuance of arrangements under section 5 of the Iron and Steel Act, 1953.

Iron and Steel Realisation Account. Accounts of the transactions 1958–59 have been published, together with the report of the Comptroller and Auditor General thereon (H.C. 165 of 1959–60).

New Towns

On May 10, 1960, the House of Commons debated the appointments made to the Cwmbran New Town Development Corporation (623 H.C. Deb. 377–386).

On May 12, 1960, the House of Commons debated the Status of New Towns in Scotland (623 H.C. Deb. 759–770).

Royal Fine Art Commission for Scotland

The Commission (chairman: Sir Hector Hetherington) has published its First Report (Cmnd. 982).

Remedies

Certiorari

It is not the general practice to award costs against a party who has not appeared to resist an application for an order of certiorari. Justices convicted the defendant of a driving offence at the close of the prosecution's case.

The defendant applied for an order of certiorari. *Held*, allowing the application and quashing the conviction, that the defendant would not be granted costs, since the justices had acted under a pure mistake, and since the prosecution had not appeared to resist the application: R. *v.* LIVERPOOL JUSTICES, *ex p.* ROBERTS [1960] 1 W.L.R. 585; [1960] 2 All E.R. 384n., D.C.

Notwithstanding sections 107 and 115 (1) of the County Courts Act, 1959, certiorari will lie against a county court judge if he has acted without jurisdiction.

Ninety-six students of Ruskin College, Oxford, claimed that their names should be included on the Electoral Register. Complaint was made against the inclusion of the names. The electoral registration officer decided that the names should be included on the register. The complainant appealed to the county court under section 45 (1) of the Representation of the People Act, 1949, in respect of six out of the 96 claimants. No notices of appeal under Ord 43, r. 8, were served on the other 90 claimants. The county court judge decided that of the six, only two were entitled to have their names registered. Subsequently the judge gave directions to the electoral registration officer to remove the names of the remaining 90 claimants. *Held*, allowing an application for certiorari to quash the judge's directions, that the judge had been without jurisdiction in giving the directions and, allowing an application for mandamus, that the applicant (whose name was one of the names removed from the register under the judge's directions) was entitled to have his name included on the register: R. *v.* HURST (JUDGE SIR DONALD), *ex p.* SMITH [1960] 2 W.L.R. 961; [1960] 2 All E.R. 385, D.C. (applying *Ex p. Bradlaugh* (1878) 3 Q.B.D. 509).

Habeas Corpus

In AL BAKER *v.* ALFORD (June 1, 1960) the Judicial Committee of the Privy Council (Lords Radcliffe, Tucker, Keith, Jenkins and Morris) *held* that an Arab, who was ordinarily resident in Bahrain, a foreign country under Her Majesty's protection, who was convicted by a special court set up by the Ruler of Bahrain of attempted assassination of the Ruler and others and sentenced to a term of imprisonment, and who was removed to St. Helena to serve his sentence, was lawfully imprisoned on St. Helena: [1960] 3 W.L.R. 121.

Mandamus

Where licensing justices, in contravention of Sched. 2, Pt. I, para. 5 to the Licensing Act, 1953, order a second session of a general annual licensing meeting later than one month after the first meeting, and consequently refuse to hear applications at the second meeting, the court has power on an application for an order of mandamus to make the order absolute calling on the justices to hold a meeting. Licensing justices ordered, at their annual general licensing meeting on February 1, 1960, that the second meeting should take place on the first Monday in March. Owing to leap year, the first Monday in March was on March 7. When the justices attended the meeting on March 7, they were told they could not hear applications because the meeting was more than five weeks since the previous meeting. Para. 5 of Pt. 1 of Sched. 2 to the Licensing Act, 1953, requires a second meeting to be held not later than one month after the first day of the annual general licensing meeting. On an application for mandamus, *held*, that the court had power to make an order absolute, calling on the justices to hold a meeting for the purpose of hearing and determining the applications: R. *v.* WOODBURY LICENSING JUSTICES, *ex p.* ROUSE; SAME *v.* SAME, *ex p.* OLDHAM [1960] 1 W.L.R. 461; [1960] 2 All E.R. 205, D.C.

SUBORDINATE LEGISLATION

Parliamentary proceedings

Select Committee on Statutory Instruments (*House of Commons*). On March 29, April 7, May 3 and 24, the Committee considered 21, 24, 37, and 23 instruments respectively and resolved that it was unnecessary to draw the special

attention of the House to them. The Committee asked for a memorandum from the Foreign Office in respect of one instrument.

Special Orders Committee (*House of Lords*). In the Seventh, Eighth, and Ninth Reports the Committee examined nine instruments. The Committee found that one instrument raised important questions of policy or principle and required the special attention of the House, and that one was not founded on precedent, but that no further special inquiries were necessary before the House decided whether to approve (H.L. (75) (84) (107) of 1959–60).

Town and Country Planning

Advertisement control

The Town and Country Planning (Control of Advertisements) Regulations, 1960, are a consolidation, without any amendment of substance, of the Town and Country Planning (Control of Advertisements) Regulations, 1948 (as amended). (S.I. 1960, No. 695.)

Enforcement notice

A local planning authority whose enforcement notice has been quashed by justices under section 23 (4) of the Town and Country Planning Act, 1947, is not a "person aggrieved" within section 23 (5) and has no right of appeal.

Justices quashed an enforcement notice served by a local planning authority and ordered it to pay costs. It applied for an order of mandamus to quarter sessions who had refused jurisdiction. *Held*, that the local authority was not a "person aggrieved" and had no right of appeal under section 23 (5): R. *v.* Dorset Sessions Appeal Committee, *ex p.* Weymouth Corporation [1960] 3 W.L.R. 66; [1960] 2 All E.R. 410, D.C.

Planning appeals

On May 16, 1960, it was stated that between October 1, 1959, and March 31, 1960, 3,255 appeals under section 16 of the Town and Country Planning Act, 1947, were decided. 2,346 were decided after a local inquiry or hearing; of these, 1,755 were dismissed, and 591 allowed. 155 decisions were contrary to the recommendation of the Inspector. 909 were decided on written representations; of these, 585 were dismissed, and 324 were allowed (623 H.C. Deb. *97–98*).

Purchase notice

An inspector of the Minister of Housing and Local Government reported to the Minister that a certain strip of land, which contained 14 bungalows and 17 plots for the stationing of caravans, most of which land was the subject of temporary planning permission, was substantially less useful to the owner of the land, who had been refused planning permission for the building of houses, and who had served a purchase notice under section 19 of the Town and Country Planning Act, 1947, that it would have been with permission for permanent redevelopment for residential purposes. The Minister confirmed the purchase notice, saying, in his letter of confirmation, that he accepted his inspector's view, and that he was accordingly satisfied that the conditions specified in section 19 were fulfilled. The local authority applied for certiorari. *Held*, quashing the purchase order, that the Minister had applied the wrong test: the test was not whether the land was "substantially less useful" in its existing state, but whether it had become incapable of "reasonable beneficial use": R. *v.* Minister of Housing and Local Government, *ex p.* Chichester R.D.C. [1960] 1 W.L.R. 587; [1960] 2 All E.R. 407, D.C.

Scotland

Accounts of the sums issued out of the Consolidated Fund, of payments therefrom under Parts I and V and of certain sums received under Parts V and VI of the Town and Country Planning Act, 1954, have been published for 1958–59 together with the report of the Comptroller and Auditor-General thereon (H.C. 150 of 1959–60).

Regulations. The Town and Country Planning (Development Plans) (Scotland) Amendment Regulations, 1960, make a number of minor amendments to the Town and Country Planning (Development Plans) (Scotland) Regulations, 1948, and in particular permit in certain circumstances the definition of an area of comprehensive development on a map to a scale of six inches to the mile. (S.I. 1960, No. 909.)

Tribunals and Judicial Functions of Ministers

General

Council on Tribunals. The first annual report of the Council on Tribunals was published on April 28.

In its report the council describes its task as "a limited one, but none the less important. It is limited in that it is concerned only with a single section of the complicated apparatus of administrative machinery which has come into being mainly as a result of the social and economic changes that have taken place in this country during the last half century or more. It is important because it is part of the continuing process of ensuring that within the field of public administration the rights of the individual to justice and fair play are recognised.

"The tribunals which are under the general supervision of the Council," the report goes on, "are very numerous and of extraordinary diversity. They cover some 35 categories and amount in all to about 2,000 in number, of which some 200 come under particular supervision of the Scottish Committee. They include, among others, tribunals concerned with National Insurance, industrial injuries, National Assistance, military service, rents, pensions, independent schools, agriculture and road traffic. Their procedure and nature vary enormously; some are simple and informal, while others closely approximate to the courts of law. It should be noted that the total number of tribunals under our supervision is not permanently fixed but that there is power under the Act to add to them. This power has already been exercised in one instance and further tribunals are likely to be added in the fairly near future."

The report points out that the council's responsibilities in relation to tribunals are in no way adjudicatory but are purely advisory and consultative and confined to the constitutional and procedural aspects of the tribunals' work. But the council does not consider that the absence of executive powers detracts from the great importance of the functions allotted to it by Parliament.

A considerable part of the council's first year of life has been devoted to the collection and co-ordination of the necessary material and to the consideration of the most effective methods to be followed in carrying out its task. During the period 57 visits were made by members of the council to tribunals in England and Wales and 40 in Scotland. "It is our experience," the report says, "that, on the whole, the tribunals which we have seen in action are working well."

The report contains no reference to any of the matters with which the council is concerned in relation to statutory inquiries. The council states that it hopes to make a start on this aspect of its duties at an early date, but that it cannot attempt detailed consideration of the procedure of statutory inquiries until the draft rules of procedure have been submitted to it.

Disciplinary bodies

General Dental Council. To make good a charge of "infamous or disgraceful conduct in a professional respect" under section 25 of the Dentists Act, 1957, in relation to such a matter as the keeping of the prescribed dental records it is not enough to show that some mistake has been made through carelessness or inadvertence in two or three cases out of some hundred patients treated during the period in which the mistakes occurred, whether the carelessness or inadvertence consisted in some act or omission by the dentist himself or in his ill-advised delegation of the making of the relevant entries to a nurse

or receptionist and omitting to check the forms to see that she had done as she was told. To make such a charge good there must (generally speaking) be some element of moral turpitude or fraud or dishonesty in the conduct complained of, or such persistent and reckless disregard of the dentist's duty in regard to records as can be said to amount to dishonesty for this purpose. The question is to some extent one of degree.

The Disciplinary Committee of the General Dental Council found a dentist, registered under the Dentists Act, 1957, guilty of infamous or disgraceful conduct in a professional respect in overcharging for and wrongful certification of treatment of National Health Service patients. The committee ordered that his name should be erased from the Register. *Held*, allowing the dentist's appeal, that on the facts the case of overcharging fell short of the degree of culpability required, nor could the wrongful certification amount to infamous or disgraceful conduct: FELIX *v.* GENERAL DENTAL COUNCIL [1960] 2 W.L.R. 934; [1960] 2 All E.R. 391, P.C.

Law Society. In *Re* A SOLICITOR (May 25, 1960) the Divisional Court (Lord Parker C.J., Byrne and Donovan JJ.) *held*, substituting an order suspending a solicitor from practising for one year, that striking off was not an appropriate penalty for a solicitor who had been convicted of using insulting behaviour whereby a breach of the peace might have been occasioned, contrary to section 54 of the Metropolitan Police Act, 1839, when the Disciplinary Committee had no knowledge of the circumstances in which the offence had been committed. [1960] 3 W.L.R. 138.

Powers of Subpoena. The report of the Departmental Committee on Powers of Subpoena of Disciplinary Tribunals (Chairman: Viscount Simonds) has been published.

The committee recommended that where a disciplinary tribunal has been constituted by statute it should not lack the powers necessary to carry out the duties imposed on it and among such powers should be the power to secure the issue of writs of *subpoena*. Existing bodies having statutory disciplinary powers but lacking the power to secure the issue of writs of *subpoena* and any such bodies as may be created in future should have such powers conferred upon them. The Committee saw no reason why writs of *subpoena* should not be issuable to secure the production before such tribunals of evidence obtained by police officers whether in the course of criminal investigations or otherwise (Cmnd. 1033).

The Government has accepted in principle the recommendations of this report (223 H.L. Deb. 1054–1055, 1334, May 19 and 26, 1960).

Income Tax Commissioners

On May 9, 1960, the Attorney-General gave the names and previous occupations of 35 General Commissioners appointed under the provisions of the Tribunals and Inquiries Act, 1958 (623 H.C. Deb. 23).

Mental Health Review Tribunals

The Tribunals and Inquiries (Mental Health Review Tribunals) Order, 1960, brings under the supervision of the Council on Tribunals the Mental Health Review Tribunals constituted under section 3 of the Mental Health Act, 1959 (S.I. 1960 No. 810).

National Assistance, Insurance and Industrial Injuries Tribunals

On May 10, 1960, various questions were raised about the accommodation of these tribunals (623 H.C. Deb. 54–56).

Pensions Appeal Tribunals

On May 10, 1960, the Attorney-General said that he understood the Council on Tribunals was now satisfied with the accommodation in London (623 H.C. Deb. 44).

Wireless and Television

British Broadcasting Corporation

Agreement. The Agreement dated June 2, 1960, between the Postmaster-General and the Corporation, which is supplemental to the Licence and Agreement between the parties made on June 12, 1952, has been published (Cmnd. 1066).

Debate. On May 12, 1960, the House of Lords debated the B.B.C. and public policy (223 H.L. Deb. 820–849).

Television Advisory Committee

The report has been published for 1960 of the Television Advisory Committee (Chairman: Admiral Sir Charles Daniel).

COMMONWEALTH AND DEPENDENT TERRITORIES

General

Colonial Development Corporation

The annual report and statement of accounts, 1959, have been published (H.C. 211 of 1959–60).

Colonial territories

The annual report of the Secretary of State for the Colonies, 1959–60, has been published (Cmnd. 1065).

Bechuanaland, Basutoland and Swaziland

Debate

On April 14, 1960, the House of Commons debated these High Commission Territories (621 H.C. Deb. 1481–1504).

British Guiana

New Constitution

The report has been published of the British Guiana Conference.

The United Kingdom Government has accepted the principle of independence for British Guiana. It has also agreed that in August 1961 a new constitution should be introduced giving the territory full internal self-government, subject to the satisfactory functioning of transitional arrangements for the administration and control of the police and the conclusion of certain arrangements relating to the public service. Defence and external affairs would remain the responsibility of the United Kingdom Government, but certain powers relating to external trade would be delegated to the British Guiana Government. This was announced on March 31, 1960, at the conclusion of the British Guiana Constitutional Conference, which had opened at Lancaster House, London, earlier in the month, and which had been convened by the United Kingdom Government to consider what measures of constitutional advance should take place in British Guiana after the present legislature completes its normal four-year term of office in August 1961. The report of the conference has subsequently been published as a White Paper (Cmnd. 998).

Certain members of the British Guiana delegation entered reservations, which are reproduced in the report of the conference. Subject to these, the conference concluded that the changes to take effect in August 1961 provided a workable pattern for the constitutional advance of British Guiana.

The 1961 constitution will provide for a bicameral legislature, consisting of a fully-elected Legislative Assembly with up to 35 members, and a nominated Senate, with 13 members. The power vested in the Sovereign in Council to legislate by Order in Council will be retained, but the United Kingdom Secretary of State for the Colonies gave an assurance that it was not his

intention to advise that this power should be exercised except for enacting constitutional instruments or to deal with grave emergency.

The Executive will be a Council of Ministers, presided over by a Premier. The Governor will appoint as Premier the leader of the majority party in the Legislative Assembly, and will appoint the other ministers on the advice of the Premier. The Governor will act upon the advice of ministers in assenting or refusing to assent to Bills, except where the reserved subjects are affected.

The British Guiana delegation had asked that control of the police and internal security should become the sole responsibility of an elected minister, but it was eventually agreed that the responsibility in this field should be transferred gradually. It is proposed that an advisory Police Council should be set up immediately, and that, within six months after its establishment, the Governor will appoint a minister to discharge the functions in relation to the police now performed by the Chief Secretary. Not later than twelve months after the establishment of the council, the Governor will forward to the United Kingdom Secretary of State for the Colonies reports by himself and by ministers on the working of the arrangements. The Secretary of State will then decide whether or not the August 1961 constitution should provide for the Governor's powers in relation to the police to pass to a British Guiana minister. Thus, if the interim arrangements work well, complete internal self-government in 1961 becomes a possibility.

The United Kingdom Government has also undertaken that if, not earlier than two years after the first general election under the new constitution, or upon it being decided that the Federation of The West Indies should attain independence, the British Guiana Legislature passes a resolution asking the United Kingdom Government to grant independence to British Guiana, the United Kingdom Government will call a conference to consider when it would be practicable to implement this request. The proviso is made that a decision that the West Indies should attain independence would not be regarded as giving grounds for considering a change in the British Guiana constitution until the latter had been in effect for at least a year (Commonwealth Survey, C.O.I., April 26, 1960; see also 621 H.C. Deb. 180–182, April 5, 1960).

Brunei

Colonial Report

The report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–9–58).

Cayman Islands

Colonial Report

The report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–10–58).

Cyprus

Negotiations

On May 9, 1960, and June 2, 1960, statements were made concerning the progress of these negotiations (623 H.C. Deb. 24–26; 624 H.C. Deb. 1640–1644).

Gambia

Constitution

The Gambia (Constitution) Order in Council, 1960, reconstitutes the Executive Council and the Legislative Council of the Gambia by removing the Official Member from each body, and by increasing the number of Elected Members in the Legislative Council, which is renamed the House of Representatives (S.I. 1960 No. 701).

Letters Patent

The Gambia Colony Letters Patent, 1960, come into operation on a day to be appointed by the Governor by Proclamation. It amends the Gambia

Colony Letters Patent, 1954, *inter alia*, in the matter of the tenure of office of judges.

Protectorate

The Gambia Protectorate (Amendment) Order in Council, 1960, applies in relation to the Protectorate the provision for the tenure of office of judges which applies in relation to the Colony (S.I. 1960 No. 702).

Royal Instructions

Additional Instructions, dated April 8, 1960, were issued to the Governor of Gambia, by which references in the Instructions of 1954 to the Legislative Council shall be construed as references to the House of Representatives.

Ghana

Colonial Stock Acts

The Ghana (Consequential Provisions) (Colonial Stock Acts) Order in Council, 1960, has been made. Article 2 of this Order makes the modifications in the Colonial Stock Acts, 1877 to 1948, which are necessary to adapt those Acts in relation to Ghana as a result of the constitutional changes which will occur when Ghana becomes a Republic. The minor variation in the Second Schedule to the Ghana Independence Act, 1957, contained in Article 3, is consequential to the modification effected by paragraph (3) of Article 2 (S.I. 1960 No. 969).

Ghana (Consequential Provisions) Act, 1960

The Ghana (Consequential Provisions) Act, 1960 (8 & 9 Eliz. 2, c. 41), received the Royal Assent on June 2, 1960. It makes provision as to the operation of the law in relation to Ghana and persons and things in any way belonging to or connected with Ghana, in view of Ghana's becoming a Republic while remaining a member of the Commonwealth.

Judicial Committee

The Ghana (Pending Appeals to Privy Council) Order in Council, 1960, has been made. The purpose of this Order is to confer on the Judicial Committee of the Privy Council jurisdiction in respect of appeals from a court or judge in Ghana which have been registered in the Privy Council before Ghana becomes a Republic and to make provision regulating such appeals pursuant to arrangements made between Her Majesty's Government in the United Kingdom and the Government of Ghana. Under this Order the Judicial Committee Act, 1833, and the Judicial Committee Rules, 1957, apply, subject to the exceptions and modifications set out in the Schedules to the Order, to those appeals (S.I. 1960 No. 970).

Jamaica

Colonial Report

The report for 1957 has been published by the Colonial Office (H.M.S.O. 58–1–22–57).

Kenya

Constitution

The Kenya (Constitution) (Amendment) Order in Council, 1960, amends the Kenya (Constitution) Order in Council, 1958, with respect to the total number of members of the Council of Ministers and to the proportion of that number who are to be public officers (S.I. 1960 No. 703).

Nigeria

Constitutional Discussions

The report of the Nigeria Constitutional Discussions, May 1960, has been published. The meeting considered a draft of the Independence Constitution for the Federation, and also considered several points of principle relating

to the constitution of the individual regions. Discussion also took place on the proposed Defence Agreement, and there was an exchange of views on the Cameroons under British Trusteeship (Cmnd. 1063).

Governor-General and Governors

The Nigeria (Offices of Governor-General and Governors) (Amendment) Order in Council, 1960, amends the provisions of the Nigeria (Offices of Governor-General and Governors) Order in Council, 1954, relating to the discharge of the functions of the office of Governer-General by a deputy (S.I. 1960 No. 704).

Rhodesia and Nyasaland

Constitutional Developments

Speaking at a Press conference held in Salisbury, Southern Rhodesia, on April 8, 1960, the Secretary of State for the Colonies said that he had concluded a series of interesting and helpful preliminary talks in Nyasaland. His object had been to take up exploration of the possibilities of constitutional advance from the point where, unfortunately, progress was interrupted by the emergency of a year ago. He had, of course, been concerned solely with the situation in Nyasaland itself, keeping in mind that the Monckton Commission was now at work and the Federal Review lay ahead. He stated that he had come with no definite or detailed proposals but, as a result of the discussions he had had, he felt that they could now usefully carry forward consideration of Nyasaland's constitutional problem by means of a conference to be held in London in the summer. He should, however, make it clear that there were wide differences between the viewpoints put forward to him, and it would be necessary for all concerned to come to the conference with a determination to make it succeed.

In a further statement, made to the House of Commons on April 14, 1960, he said that the conference would probably be in July. He would announce the date as soon as possible. In reply to questions, he said that it would be unsatisfactory to confine the composition of the conference to members of the Legislative Council alone. It would be necessary to bring in people from outside, and he had in mind inviting between fifteen and twenty people, including the representatives of the Malawi Congress Party, the United Federal Party and members of the official and unofficial sides of the Legislative Council. He also said that there had been a considerable relaxation of tension in Nyasaland and that he was sure that very few of those now detained in Nyasaland would still be in detention by July.

In the course of his statement in the House of Commons, the Secretary of State referred to the fact that, while in Central Africa, he had visited Northern Rhodesia as well as Nyasaland, and had had discussions with the authorities and with representatives of all shades of political opinion. He had thought it desirable to say, in a public speech in Northern Rhodesia on March 29, 1960, that the Government had no plans in contemplation for constitutional change in that territory, although he could not predict that the outcome of the review of the federal constitution might not entail some consequential reconsideration of the territorial constitution.

On the other hand, it was apparent that those who were pressing for rapid constitutional change were moved by the fear lest the African voice would go unheard at the Federal Review. Accordingly, he had repeated that it was wrong to assume that the delegations to the review conference would necessarily be drawn solely from the Legislative Council of the territory; and in the same speech he had reaffirmed that the Government stood by the pledges in the preamble to the federal constitution, and would not abandon their responsibilities to the peoples of Northern Rhodesia and Nyasaland unless and until all their peoples so desired (621 H.C. Deb. 1475–1480; Commonwealth Survey C.O.I., April 26, 1960).

Northern Rhodesia

On May 20, 1960, the Secretary of State for the Colonies gave an interview to Mr. Kenneth Kaunda, National President of the United National Independence Party of Northern Rhodesia (UNIP).

Mr. Kaunda repeated the desire of his party to see substantial constitutional change in Northern Rhodesia at a very early date.

The Secretary of State said that, after further consideration of the views expressed to him in Lusaka, he adhered fully to the decision that this was not the time to consider a change in the constitution. He had been gravely disturbed by reports from the Governor of Northern Rhodesia that, despite what he had said to UNIP representatives in Lusaka on this subject, there had been widespread propaganda by members of the party implying that a major constitutional change would be made, and even that self-government would be achieved, this year. Such misleading statements could have serious and dangerous consequences: and he had said in the House of Commons on May 10 that the growing tendency to violence which the recent events in the Western Province exemplified had its roots in extremist political agitation.

The Secretary of State recalled that the House of Commons had strongly expressed the view that the leaders of all the political parties should call upon their followers to renounce violence in any circumstances and said that he was glad that Mr. Kaunda had himself publicly condemned violence without reserve and in all circumstances. He, as Secretary of State, was bound to take vigorous counter-measures in the face of violence and had already assured the Governor of full support in any measures which he might find necessary. He reminded Mr. Kaunda that he had emphasised in Lusaka that violence inevitably retarded political progress, and that it must be realised that Her Majesty's Government was not amenable to pressure of this kind.

In order that the public in Northern Rhodesia should clearly understand the position, it was essential to make it abundantly clear where Her Majesty's Government stood on the constitutional question. They had no plans in contemplation for altering the constitution in Northern Rhodesia, which has been in operation for little more than a year. He remained of the view that it would not be right to initiate any discussions on the constitution at least until the outcome was known of the Monckton Commission and the Federal Review Conference. This meant that there would be no change in Northern Rhodesia's constitution in 1960.

The Secretary of State said that he fully understood that the demand for early constitutional change sprang largely from the fear that the African voice would go unheard at the Federal Review: but he gave, again, an explicit assurance that African opinion in Northern Rhodesia and in Nyasaland will be represented at the Federal Review Conference. It was too early for the Governments to choose the delegations or to say precisely what their composition might be; but they would be widely representative and would not be confined to members of the present Legislative Councils (Commonwealth Survey, C.O.I., May 24, 1960).

Southern Rhodesia

On May 9, 1960, a statement was made about the progress of discussions between the Secretary of State and Sir Edgar Whitehead (623 H.C. Deb. 31–37).

The House of Commons debated the situation on June 3, 1960 (624 H.C. Deb. 1815–1840).

Seychelles

Colonial Report

The report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–37–58).

Constitution

The Seychelles (Legislative Council) Order in Council, 1960, dated April 8, 1960, makes new provision for the constitution and procedure of the Legislative Council of the Colony.

Royal Instructions

Additional instructions, dated April 8, 1960, were issued to the Governor of the Seychelles, amending certain clauses of the principal instructions issued in 1948.

Sierra Leone

Colonial Report

The report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–38–58).

New Constitution

The report has been published of the Sierra Leone Conference (Cmnd. 1029).

The Sierra Leone Constitutional Conference ended on May 4, 1960, with an announcement by the Secretary of State for the Colonies that Sierra Leone would become independent on April 27, 1961.

Meanwhile, it was agreed that certain interim changes should be introduced. Most of these will be made within the next few weeks. Among the most important of them are that the Governor of Sierra Leone (Sir Maurice Dorman) will hand over the presidency of the Executive Council to the Premier of Sierra Leone (Sir Milton Margai). Executive public and judicial service commissions will be set up, and Ministers will be associated with the handling of defence, police and external affairs.

Among other matters, the conference agreed to the inclusion of fundamental human rights in the constitution of independence and to the procedure for amending the constitution and entrenching the basic constitutional provisions.

During the period of the conference, talks were held between the Colonial Office and the Sierra Leone Government, and the outcome of the talks between the two Governments was reported to the conference. It was agreed that the two Governments would negotiate an agreement providing for mutual defence co-operation to be signed after independence. The principles of a scheme of compensation for overseas officers on the creation of an Executive Public Service Commission were also settled.

Finally, the financial outlook of Sierra Leone after independence was reviewed. The two Governments were agreed that Sierra Leone could look forward to a continued period of economic expansion, but the initial burdens of independence, including defence and compensation, would present some difficulty at a time when normal, colonial-type assistance would cease. The United Kingdom Government have therefore offered assistance totalling £7½ million, in the form of loans, grants and technical assistance. This has been accepted by the Sierra Leone Government (622 H.C. Deb. 1265–1269; 223 H.L. Deb. 436–437, May 5, 1960).

The Sierra Leone (Constitution) (Amendment) Order in Council, 1960, amends the Sierra Leone (Constitution) Order in Council, 1958, in order to establish for Sierra Leone a Cabinet consisting of a Prime Minister and Ministers in place of the Executive Council. Provision is made for the Governor to summon a special meeting of the Cabinet whenever he thinks fit. It also empowers the Governor to direct a Minister to perform, on the Governor's behalf but subject to his control, any power or duty relating to a subject within the special responsibilities of the Governor.

The 1958 Order is further amended by the insertion therein of provisions with respect to judges of the Supreme Court.

The opportunity has also been taken to make certain minor amendments to the 1958 Order (S.I. 1960 No. 1056).

The Sierra Leone Protectorate (Amendment) Order in Council, 1960, has been made. The purpose of this Order, which revokes and replaces sections

8 and 9 of the Sierra Leone Protectorate Order in Council, 1951, is to ensure that the provisions of those sections do not apply to the office of judge of the Supreme Court of Sierra Leone (S.I. 1960 No. 1057).

Singapore

Colonial Report

The report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–49–58).

Somaliland

Constitutional progress

On May 2, 1960, the elected Ministers of the Somaliland Protectorate came to London, at their request, following a motion passed by the Protectorate Legislative Council on April 6, 1960, calling for independence and union with the neighbouring United Nations Trust Territory of Somalia, as soon as the latter becomes independent on July 1, 1960.

In announcing the forthcoming discussions in the House of Commons on April 11, the Prime Minister pointed out that any union between the two territories would naturally involve the ending of all the responsibilities for government which Her Majesty's Government now exercise in the Protectorate and could only be brought into effect between an independent Somaliland and an independent Somalia.

In reply to a further question about the Government's policy regarding the establishment of a Greater Somalia, incorporating neighbouring territories, the Prime Minister stated: "Her Majesty's Government do not, and will not, encourage or support any claim affecting the territorial integrity of French Somaliland, Kenya or Ethiopia. This is a matter which could only be considered if that were the wish of the governments and peoples concerned." (621 H.C. Deb. 104–105.)

On May 5, 1960, the Secretary of State said:

"In his statement in Hargeisa in February 1959, Mr. Lennox-Boyd said that, in considering constitutional progress in the Somaliland Protectorate, Her Majesty's Government thought it right to pay special regard to the fact that the neighbouring territory of Somalia was due to become independent in December 1960; and that, in these circumstances, Her Majesty's Government thought there was justification for proceeding with constitutional development in the Protectorate at a faster pace than they believed to be suitable or advantageous in more normal circumstances elsewhere. "Since then, the General Assembly of the United Nations has brought forward the date of independence for Somalia to July 1, 1960. On April 6 all the elected members of the Protectorate Legislative Council supported a resolution in favour of independence and union with Somalia on July 1. As the Prime Minister said in the House of Commons on April 11, Her Majesty's Government understand the deep feelings behind this motion. Her Majesty's Government are also aware that political leaders from the Protectorate reaffirmed their desire for independence and union on July 1, in a statement issued jointly with representatives of the Somalia Legislative Assembly in Mogadishu on April 16. In pursuance of the policy announced by Mr. Lennox-Boyd for the Protectorate, and in view of the declared wishes of the elected representatives of the Protectorate, Her Majesty's Government are now prepared to take further constitutional steps to make possible the independence of the Protectorate by July 1. [This was later advanced to June 26.] In order that the Protectorate can become independent in so short a time, it will be necessary at this conference to examine further, and to reach agreement on, a number of important matters, among them legal processes, financial assistance, the public service and some aspects of international questions. Excellent progress on all these matters has already been made, and I am confident that I can count on the full co-operation of the elected Ministers in the completion of our task" (Commonwealth Survey, C.O.I., May 10, 1960).

The Somaliland Protectorate constitutional conference ended in London on May 12, when the conference report was signed by the Secretary of State for the Colonies, Mr. Iain Macleod, by the elected Ministers of the Protectorate, and by the Governor, Sir Douglas Hall.

A communiqué, issued at the close of the conference, gave further information about the help which the United Kingdom Government propose to offer to the Protectorate during the early stages of independence. This includes the provision of a United Kingdom aid mission, formed of officers who will be available to the public service of Somaliland for a period of six months after independence; the continued secondment of British military personnel to the Somaliland Scouts (a local military force) for a similar period; and financial aid of £1·5 million during the first year after independence.

The following is an extract from the communiqué:

"In order to meet wishes expressed by the elected Ministers that some of the officers at present serving in the Protectorate should continue to do so after independence, the Secretary of State proposed that there should be, for an interim period of six months after independence, a United Kingdom aid mission, formed of such officers as the United Kingdom Government might appoint, to be available in the Public Service of Somaliland at the request of the Somaliland Government. Similar arrangements were offered for the continued secondment of British military personnel to the Somaliland Scouts, also for an interim period of up to six months. The conference recognised that the conditions and purposes under which such personnel could continue on secondment would have to be carefully defined, and the heads of an agreement for this purpose were approved.

"The Secretary of State recalled the undertaking given by his predecessor, Mr. Alan Lennox-Boyd, that Her Majesty's Government would, in the light of circumstances prevailing from time to time, be prepared to give sympathetic consideration to the continuation of financial assistance within the limits of the amount of aid being provided to the Protectorate. He proposed that, subject to Parliamentary approval, the sum of £1·5 million should be the amount of aid provided during the first year after independence, of which half will be devoted to development expenditure. This sum includes the cost, which Her Majesty's Government will meet, of the United Kingdom aid mission and of military personnel on secondment. The elected Ministers informed the Secretary of State that it was their intention as far as practicable to maintain the level of economic and social services which are at present available to the people of the Protectorate. The Secretary of State said that, while Her Majesty's Government are glad to give financial help to the people of Somaliland for a period after independence, he would expect that in due course dependence upon the United Kingdom for financial assistance will diminish, and that to this end the level of aid will be subject to annual review." (Commonwealth Survey, C.O.I., May 24, 1960; see also 623 H.C. Deb. *82–84*, May 12, 1960.)

The Somaliland (Constitution) (Amendment) Order in Council, 1960, replaces section 45 of the Somaliland (Constitution) Order in Council, 1960, in order to remove an ambiguity and amends section 62, relating to the making of regulations regarding pensions, compensation, etc. (S.I. 1960 No. 848).

The Somaliland Order in Council, 1960, makes new provision for the government of Somaliland. It vests executive authority in a Council of Ministers consisting of a Prime Minister and three other Ministers and collectively responsible to a Legislative Assembly. The Legislative Assembly consists of a Speaker and thirty-three elected members. The Order also makes provision with respect to the courts of Somaliland and the law to be applied by them and the Public Service of Somaliland (S.I. 1960 No. 1060).

SOUTH AFRICA

High Commission Territories

On May 19, and 26, 1960, questions were asked in the House of Commons about persons who had taken refuge in these territories from South Africa (623 H.C. Deb. 1485–1488; 624 H.C. Deb. 653–658).

Policies

The following resolution, moved by Mr. Stonehouse, Opposition M.P., was adopted by the House of Commons after a debate on April 8, 1960:

"That this House, deploring the present racialist policies now being pursued by the South African Government, under which non-Europeans are consistently denied normal human and political rights, including the right of campaigning for a peaceful change in the laws under which they live, and the recent declaration of a state of emergency and the many arbitrary arrests, fearing that a continuation of this repression is threatening the security and welfare of all races living in the Union of South Africa and good relations between members of the Commonwealth, urges Her Majesty's Government to take the opportunity at the forthcoming Commonwealth Prime Ministers' Conference to bring home to the South African Government the strong feelings of British people on this question; and restates its firm belief that peace and tranquillity in South Africa can only be secured in the long run on the basis of freedom and equality and a full respect for the inherent dignity and humanity of all men."

Members of all parties spoke in favour of the resolution, which was adopted without division.

In the course of the debate, the Minister of State for Commonwealth Relations said that there would be an opportunity of discussing the problems posed for all by the present situation in the Union of South Africa during the course of the informal discussions which had been one of the most important features of Commonwealth conferences in the past. The Prime Ministers would thus be able to hear the views which might be expressed by the South African Prime Minister about the situation in South Africa, and, in turn, to give him the benefit of their views and experience. Therefore the action which the motion urged upon the Government was already an inherent part of the normal procedure of the Prime Ministers' Conference.

He said that, while the concern expressed by the House at the South African situation was perfectly natural, it was important to realise that there was an historic principle at stake with relation to the Prime Ministers' Conference; and to the future relationships of the independent countries of the Commonwealth. There were few Commonwealth countries whose policies had not, at some time or another, aroused controversy in one or more of the others; if a Commonwealth Prime Ministers' Conference became an occasion at which any Prime Minister might have the domestic policies of his Government criticised and arraigned by his colleagues, such conferences would cease to be acceptable to Commonwealth Prime Ministers generally. The necessity for restraint in this regard applied to all the Commonwealth, but even more directly to the United Kingdom. An attempt by the United Kingdom to intervene directly in the domestic affairs of any Commonwealth country would appear not only to that country, but to other independent members of the Commonwealth, as an attempt to reassert the old dominance of the United Kingdom.

The Minister of State said that, in his speech at Capetown, the Prime Minister had made very clear the point of view of the United Kingdom Government on the situation in the Union. No one could doubt its concern at the events which had been occurring in the Union or the causes which led up to them. It was the Government's wish to use its influence in a constructive and helpful way, and to carry out the special responsibilities which the United Kingdom had in its territories in Southern Africa. No one who had lived or worked in Africa or had shared the hopes of seeing there the spread of order, tolerance and freedom, could fail to be heart-broken at recent events. The

antidote was for the United Kingdom Government to seek the best way which lay within its power to prevent a situation arising in which South Africa found itself in one of the culs-de-sac of history from which there could be no escape except through violence and tragedy. He believed that it was in this spirit that the motion had been considered by the House, and he hoped that it would be in that spirit that the Government and people of the Union would understand it.

In conclusion Mr. Alport quoted from a reply to a supplementary question which the Prime Minister gave on April 5, 1960:

"The British Commonwealth has, I think, a great task. I believe it to have the possibilities of a great future. It will outlast the particular people who preside over the fortunes of any country at any given time. I think we must remember not lightly to throw away or to injure what I am certain in the years ahead will be a great instrument for good." (621 H.C. Deb. 774–843.)

Security Council

On April 6, 1960, the Minister of State for Foreign Affairs made a statement concerning an abstention from voting by the United Kingdom representative in the Security Council (621 H.C. Deb. 375–382).

United Kingdom citizens

On April 5, 1960, The Minister of State for Commonwealth Relations made a statement concerning the position of U.K. citizens under arrest in South Africa (621 H.C. Deb. 199–202).

Tanganyika

Report

The report by H.M. Government to the General Assembly of the United Nations for 1959 has been published in two parts (H.M.S.O. 58–346).

The Tanganyika (Legislative Council) (Amendment No. 2) Order in Council, 1960, rectifies some minor inconsistencies in the Tanganyika (Legislative Council) Order in Council, 1926, as amended (S.I. 1960 No. 1058).

The Tanganyika (Public Service Commission) Order in Council, 1960, makes provision for the establishment of a Public Service Commission for Tanganyika (S.I. 1960 No. 1059).

Trinidad and Tobago

Executive Council

In deciding whether a registered elector of Trinidad and Tobago may refer the question whether a minister of the colony was a member of the Executive Committee to the Supreme Court of the colony the following considerations apply:

(1) Only the Executive Council itself can refer to the Supreme Court of the colony under section 40 (1) of the Trinidad and Tobago (Constitution) Order as amended a question as to the right of a person to be or remain an elected member of the Council.
(2) A registered elector therefore cannot proceed under section 40 to restrain a person from acting as a minister on the ground that he is not a member of the Council.
(3) No appeal lies to the Privy Council from a determination by the Supreme Court on a reference under section 40 or from any decision on the same subject-matter.

A registered elector of Trinidad and Tobago sought to refer to the Supreme Court of the colony under section 40 the question whether a minister of the colony was a member of the Executive Committee. *Held*, that the reference was properly dismissed on the ground that the elector had no power to maintain the proceedings in any form. Nor was he entitled to an injunction restraining the Minister from acting as such because that raised the question whether he was a member of the Council. In any case there was no appeal to the Privy Council: Patterson *v.* Solomon [1960] 2 W.L.R. 685; 104 S.J. 307; [1960] 2 All E.R. 20, P.C. (applying *Théberge* v. *Laudry* (1876) 2 App.Cas. 102).

Uganda

Colonial Report

The report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–47–59).

Virgin Islands

Colonial Report

The report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–25–58).

Letters Patent

The Virgin Islands Letters Patent, 1960, dated April 8, 1960, comes into operation on a day to be appointed by the Administration by proclamation. It amends the Virgin Islands Letters Patent, 1959.

West Indies

Tour

On June 21, 1960, the Secretary of State for the Colonies made a statement concerning his recent tour to the West Indies (625 H.C. Deb. 219–224).

Zanzibar

Constitutional Review

It was announced in the United Kingdom on March 31 that, with the agreement of the Sultan of Zanzibar, Sir Hilary Blood has been appointed a commissioner to review the present constitutional position in Zanzibar. His terms of reference are:

> "After consultation with the representative members of the Legislative Council, and other leaders of political opinion in Zanzibar, to make recommendations on measures of constitutional advance. In framing the recommendations regard should be paid:
>
> (1) to Her Majesty's Government's view that the legislature should become predominantly elective in character, and that the Executive should be reorganised to permit the establishment of a ministerial system;
>
> (2) to the following principles which should not be departed from:
>
> (*a*) the position of the present dynasty should be safeguarded and guaranteed;
>
> (*b*) the principle of Zanzibar citizenship should be safeguarded;
>
> (*c*) the aim should be to promote development on non-racial lines;
>
> (*d*) there should be a common roll of electors; and
>
> (*e*) there should be no change for the present in the franchise."

The setting-up of a ministerial system, with an unofficial majority under a Chief Minister, and the introduction of an elected majority into the Legislative Council, are the principal recommendations put forward by Sir Hilary Blood.

Sir Hilary Blood recommends that the Executive Council (which now has 7 official and 3 representative members) should consist of a Chief Minister and 4 other elected ministers, with 3 *ex-officio* members. The British Resident would continue, as at present, to preside over meetings of the council.

In the Legislative Council (now 13 official and 12 representative members), it is proposed that there should be 29 members, of whom 21 would be elected, 3 would be *ex-officio* members and 5 would be appointed by the Sultan on the recommendation of the British Resident.

Other recommendations relate to the appointment of a Speaker of the Legislative Council and to the position of the Civil Service. The Commissioner does not recommend any change in the present system of franchise under which there is a common roll for Zanzibar subjects, with certain qualifications of age, residence, literacy, and property or service to the community.

The life of the present Legislative Council, elected in 1957, has been extended to enable the next elections, which were due to take place in July 1960, to be postponed pending consideration of the new constitutional proposals (Commonwealth Survey, C.O.I., June 21, 1960).

BOOK REVIEWS

JUDGE AND JURIST IN THE REIGN OF QUEEN VICTORIA (*The Hamlyn Lectures*). By C. H. S. FIFOOT, M.A., F.B.A. [London: Stevens & Sons, Ltd. 1959. 137 and (index) 2 pp. 15s.]

THE Hamlyn Lectures have never fallen into any set pattern. There have been broad surveys of the law, discussions of particular fields or institutions, and the last volume again breaks new ground. It is, in a sense, a study of the effect of personalities upon the law. Those personalities are grouped into judges and jurists and the achievements of both groups are assessed. This grouping and assessment are all the easier in the Victorian age since the groups were (if one discounts Holmes), in a sense apart, the former being in no way a product of the latter. Throughout it all, however, individuals and their achievements stand out.

Apart from a general setting for the age, which is well and shortly done, the work of the two groups is looked at in the contexts of Civil Liability, Corporate Personality, Possession, and Criminal Liability. Even if, in many cases, the general outline of the story is familiar to lawyers, there can be no complaint for fresh details of interest emerge, especially in relation to the jurists. Moreover the lectures are not directed to the lawyers, but to laymen, and among them the struggles of both groups of lawyers are often not realised. Despite the detail that is given the major struggles of the nineteenth century do stand out especially as they occurred in the courts. The difficulties of dealing with the new types of corporation, of discovering general principles of liability for negligence or the old and continuing difficulties of possession had to be dealt with in the first place in practice. Even though the results of contending with these difficulties were not always satisfactory neither do they give grounds for shame, and the lectures clearly emphasise how hard is the task of both groups when they are dependent upon "the pattern imposed by the chance medley of litigation." In a short and valuable conclusion the lecturer stresses the limitations and temptations to which each group is subject; the former may well spoil the result even if the latter are resisted. Any idea that finding, applying, or making the law is a mechanical process, or any idea that the complexities of law are necessarily the creation of lawyers is destroyed. Thus the lectures are very successful in giving a picture of the process of the development of law, a picture which is both better and pleasanter because of its style. The allusions to literature or events are pleasurable in themselves and help to an understanding of the age. The many asides about the leading figures make them stand out as persons and contribute much to the value of the lectures for their purpose.

J. D. B. MITCHELL.

PUBLIC ENTERPRISE IN SWEDEN. By DOUGLAS V. VERNEY. [Liverpool University Press. x + 132 pp. 21s.]

THERE can be little doubt that any student of British constitutional development would find Sweden an absorbing subject for comparative inquiry. Here is a monarchy, a parliamentary system and a type of cabinet government whose institutional structure and procedures are unique, and which has found intriguingly different solutions to the same problems of popular control, ministerial responsibility, and the like, from those confronting us. Mr. Douglas Verney has already provided us with a major study of Swedish constitutional

history throughout a crucial period of evolution, in his *Parliamentary Reform in Sweden, 1866-1921*. He now turns to the narrower topic of public enterprise, and gives us in short compass some account of the special Swedish institutional contributions in this field—the Trading Agencies and the State Companies. The first of these has a constitutional status somewhere between that of our government department and our public corporation: the second finds a place between our public corporation and our joint stock company.

Mr. Verney takes us rather breathlessly through the history, the forms and some of the problems of the eight Trading Agencies and the twenty-five State Companies. He demonstrates the differences and the similarities between them in the contexts of legal status, management, finance and personnel: he describes the relationships between them and the Crown on the one hand, and Parliament on the other hand; and he discusses the theoretical implications of a system which has grown piecemeal—like so much of our own—in response to particular needs and circumstances. All this is in itself fascinating and stimulating, and the author deserves our gratitude for his pioneering. It is a pity, though, that his ambition was to achieve more than a straightforward presentation of Swedish experience. What was intended was as much a contribution to the current debate on the accountability of the British nationalised industries as an exposition of Swedish public enterprise. The result is a not entirely satisfactory treatment of either topic. The author has assumed rather too much knowledge on the part of his British readers of the basic features of Sweden's constitutional practices, and many of the explanations of such features which he does include in the text are too slight to give those readers confidence that they have got their perspectives right. At the same time, because of the lack of penetrating studies of our own public corporations on which to draw, the comparative approach inevitably lacks depth.

It is always a nice dilemma—whether to wait until every unit to be compared has been exhaustively appraised before attempting comparison, or whether to take a chance with existing information in order to initiate some general line of inquiry. With a concept so subtle, so variable and, indeed, so tenuous, as public accountability there is, perhaps, more to be said in favour of giving priority to extensive studies of individual systems. In that respect the present offering is not quite exhaustive enough, though it should certainly succeed in arousing fresh demands for the more prominent inclusion of Sweden in the syllabus for courses of comparative government.

F. M. G. Willson.

Common Sense in Law. By Sir Paul Vinogradoff. 3rd edition revised by H. G. Hanbury. [Oxford University Press. 192 pp. 7s. 6d.]

The first edition of this book appeared in 1913 and this reviewer recollects that when he read it as a student in 1923 he and his fellow students then thought it somewhat old-fashioned. The present edition, as Professor Hanbury explains, reproduces for the most part Sir Paul Vinogradoff's original work in its entirety and revisions have only been made where subsequent legislation has caused inaccuracies in the examples originally given. Hence the book continues to give an extremely clear summary of jurisprudence as viewed in Edwardian days and is mainly illustrated by examples suitable to that halcyon era.

As a museum piece it has considerable merits. Unfortunately, however, the publishers claim that the purpose of this edition is "to give the citizen basic information concerning such aspects of the British legal system as are likely to affect him in daily life." However true this was in 1913, this claim is quite unjustified today. Although a chapter is given to legislation, nothing is said of delegated legislation. Nothing is said about tribunals and the

methods they adopt. There is not even a suggestion of the conflict between private property and public interest involved in the modern conception of the welfare state. A British citizen who buys this book today in order to find out where the law affects him will waste his 7s. 6d. The War Office has often been blamed for fighting each war with the equipment and experience of the previous war but one; the Oxford University Press here follows in the same tradition.

G. S. A. WHEATCROFT.

INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION. By A. V. DICEY. Tenth edition. By E. C. S. WADE [Macmillan. 1959. cxcviii and 535 pp. 35s.]

DICEY, long revered and then disparaged, has lately been revisited by Professor F. H. Lawson and revivified (after an interval of twenty years) by Professor E. C. S. Wade. The author would have been delighted to know that the ninth edition of his work was to be reprinted six times and that controversy would still swirl about it a generation after his death. For Dicey was, above all, a teacher and a propagandist who plainly enjoyed the hurly-burly of debate and disputation. And no one who has read his tracts against Irish Home Rule and women's suffrage can question his remarkable aptitude for trenchant popular exposition. The apparent immortality of his *Law of the Constitution* may, indeed, be attributable to its style as much as to its content. It is true that his was a pioneering work, that it flattered his countrymen's ethnocentricity, that its dominant themes were uncomplicated, that it reflected a political philosophy which buttressed opposition to collectivist tendencies and offered itself as a target to be aimed at by the new radicals, and that it was widely read overseas. Even so, it is not easy to convince a young student that it really is a classic—until he has read it.

Dicey had a certain amount of luck on his side; and he has also been fortunate in his editor. Professor Wade's method has been to leave the main body of Dicey's text intact, supplementing it with footnotes to indicate changes in the law and books and articles relevant to the subject-matter, and to replace Dicey's Introduction with essays of his own, in which he considers the author's main propositions in a critical light and relates them to subsequent developments in the law and the Constitution. This editorial policy has undoubtedly been the best that could have been adopted, and Professor Wade's own contributions have earned recognition in their own right as an important addition to the literature on public law.

The ninth edition has been subjected to an appendectomy and grafting operations, and the book is now more than a hundred pages shorter. The editor's section on administrative law has been removed, in a modified and abbreviated form, to the Introduction. His section on public meetings and liberty of discussion is cut out altogether; this is a pity, for the law relating to civil liberties has received far too little attention from modern writers. The appendices on the dissolution of parliament, Swiss federalism and the duty of soldiers called upon to disperse an unlawful assembly, which were in the main Dicey's own work, go out also; so, too, does the editor's collection of recent constitutional statutes. The new appendices are an article by Professor P. M. Gaudemet of Nancy (replacing the article by Professor René David) on *droit administratif* in France; Dicey's article on "The Development of Administrative Law in England," originally published in (1915) 31 L.Q.R. 148; and a short bibliography of modern English authorities on matters covered in the book.

Professor Wade notes that since the last edition the centre of controversy has shifted from Dicey's formulation of the rule of law to his analysis of parliamentary sovereignty. Minute criticism of Dicey's conception of the rule of law is admittedly *vieux jeu*.' It is now generally conceded that much of the criticism that has been levelled against it has been well founded and that some

of it has been exaggerated or misplaced. This is not to say that forthright iconoclasm was unjustified. In the 1920s and 1930s Dicey's doctrines were often invoked both indiscriminately and inaccurately to discredit the irreversible new trends in administrative law, and a vigorous answer (which necessarily involved a searching examination of the validity of Dicey's views) was called for. Dicey's most serious disservice to British public law was to leave behind him the impression that *droit administratif* and anything that appeared to resemble *droit administratif* were bad things because they were inconsistent with the rule of law—which was naturally a good thing. Professor Lawson, in his recent articles in *Political Studies*, has shown that Dicey's early misconceptions about the French system were not wholly inexcusable; but Dicey failed to make an unequivocal retraction, and what he was thought to have written in his eighth edition proved to be more significant than what he wrote in fact. His neglect of executive discretionary powers in English law is understandable when one has regard to the limited scope of the book and their relatively small importance in 1885; but his flat assertion that the idea of the rule of law excluded the existence of wide discretionary authority on the part of the Government looked suspiciously like an affirmation of political faith and made it difficult for others to take a sufficiently objective view of later developments.

Nevertheless, Dicey's formulation of the rule of law has left an indelible impression on British jurisprudence. In so far as it mirrored a particular set of relationships between the Executive, the citizen and the law courts, it has invested those relationships with the quality of fundamental characteristics of the Constitution. And, as Professor Wade points out, his emphasis on personal freedom has influenced the climate of debate both in law and in politics. Moreover, it is not easy to make any analysis of the Constitution today without giving some attention to the idea of the rule of law, even if Dicey's own formulation is not expressly discussed. Sir Ivor Jennings's *The Queen's Government* begins and ends with reflections on the rule of law from which Dicey would not have been likely to dissent. Nor, one imagines, would he have found much to disagree with in the restatement of the rule of law adopted by the International Commission of Jurists, in which some of his own ideas are synthesised in a modified form with those of other writers.

In the Introduction to the ninth edition Dicey's analysis of the sovereignty of Parliament regarded as a legal concept was supported too perfunctorily. In the present edition the editor has taken account of some of the questions posed by the South African constitutional cases of 1952 and other recent developments in the Commonwealth. His answers (which would be approved by the majority of lawyers, though not by the majority of those who have written articles on the subject during the last few years) are still substantially the same. In particular, he stands by his opinion that the concept of sovereignty precludes Parliament from binding itself even on matters of form and procedure, and that so far as the courts are concerned the record of a statute on the Parliament Roll is conclusive. The latter opinion may well be correct (see also Jennings, *The Law and the Constitution* (5th ed.), 139), though the point is an arguable one. However, I am unable to agree that either logic or authority sustains the former opinion unless it is hedged about by a number of qualifications. Maugham L.J.'s dictum in *Ellen Street Estates, Ltd.* v. *Minister of Health* [1934] 1 K.B. at 597, to the effect that Parliament cannot "bind itself as to the form of subsequent legislation," which the editor regards as authoritative, I find quite inconclusive; the context seems to me to indicate that the word "form" was almost certainly being used to mean substantive content. Moreover, whilst it is no doubt true to say that the rule of judicial obedience to Acts of Parliament is legally ultimate—ultimate in the sense in which that term was used by Salmond—it does not follow that the courts would have an unfettered discretion to disregard a parliamentary redefinition of the

meaning of "an Act of Parliament." And the meaning of an Act of Parliament may be changed by Parliament expressly or by implication. If the validity of a measure purporting to be an Act of Parliament but passed in disregard of statutory procedural requirements were to be challenged in an appropriate form of proceedings, the relevant questions would be answerable by a court applying criteria already present within the existing legal order. The questions would be legal questions, though there would inevitably be differences of opinion about the criteria to be applied and the manner of applying them.

The discussion of parliamentary sovereignty in the Commonwealth provokes other questions. The exceptional difficulties inherent in the concept would have been more clearly exposed if the editor had considered certain aspects of the Indian Independence Act, 1947, but he may perhaps have felt that the Statute of Westminster provided problems enough.

The printers and publishers have shown a proper reverence for greatness by preserving Dicey in his traditional type and format and by making the book available at a moderate price. But even for an immortal, and when due allowance is made for printing disputes, an interval of fourteen months between the dating of the editor's preface and publication seems excessive.

S. A. de Smith.

Social Principles and the Democratic State. By S. I. Benn and R. S. Peters. [George Allen & Unwin. 1959. 403 pp. 32s.]

This is an introduction to the philosophical arguments used to justify, pervert, or destroy democratic institutions. In Part I the elements of moral and legal theory are given. The authors then tackle (Part II) social principles and their implementation. Part III covers principles of association and the democratic state; and there is an appendix on international relations.

In some ways the reviewer felt the book was not for him, by nature disinclined to worship royalty, flog Jews or negroes, or impose the death penalty for traffic offences. But there are rational objections to these things, and the authors do show the tricks of their trade that floor many plausible champions of unattractive practices. The book is a good manual of self-defence, though perhaps too persuasive to be an ideal textbook—which is not to say that such a textbook would be any more welcome. At its best, the book resembles a long, amiable argument with a fascist colleague. One voter, though, will not switch to the authors' "cautious utilitarianism" if there is another General Election in this country.

It is difficult to evaluate the whole of such a book—though quite properly the text develops a continuous thesis. The analytical jurisprudence and doctrines of punishment are up to date and well done. The views of Dr. G. L. Williams on the definition of law are revived at page 73, though Professor Hart, who is extensively quoted elsewhere in the book, has shown the limitations of such an approach. Generally, though, the application of linguistic techniques to legal theory is successful here, though Hohfeld and Kocourek might have been invoked to clarify notions of rights and property.

There are some small misstatements, and an odd—even incorrect—condensation of the law of libel at page 229. The bibliographical notes at the back provide a satisfying mass of further reading.

The authors have, in fact, provided a book which will rapidly show the student the difference between some helpful and unhelpful ways of thinking, though it would be appalling if it were regarded as the answer to all a maiden's doubts and prayers.

D. J. Bentley.

PUBLIC LAW

Winter, 1960

Comment

We live in stirring times. Lord Monckton and his Commission produced a Report on Rhodesia and Nyasaland which seemed to deal with matters the exclusion of which in its terms of reference had led Her Majesty's Opposition to refuse to nominate members. This same Opposition received instructions from a national conference which its Leader did not accept. The trusty and well-beloved Sir Edwin Herbert (for this was a Royal Commission) proposed, with his fellow members, the abolition of the London County Council. And the *News Chronicle* and the *Star* ceased publication. One way and another, the Left-of-Centre did not have a happy few weeks.

The argument in the Labour Party about the role of the annual conference is not new. There has long been a dispute on how democracy works in this context, and it once showed itself in contentions that any Labour Prime Minister should receive some sort of direction from some body or another when he came to form his Government. Lord Attlee, however, proceeded along the usual constitutional lines of making his own appointments, after consultation no doubt with a few of his closest colleagues. In the present crisis the contention put forward by those who wish to emphasise the overriding force of conference decisions must be equally relevant, whether the Labour Party is in power or in opposition. And if it were accepted by a Labour Government, it would be a constitutional novelty. For behind the contention lies a democratic idea which may be good but is certainly not implemented at present.

The contention rests on the belief that there is or should be a continuous line from the People or some section of it, through representative bodies, to the Government. In its simplest terms this is an old friend, known popularly as the Liberal Fallacy. Whatever its origins, it received a great support from Bagehot, who in this matter is responsible for more misleading analysis than any of the classic writers on the constitution. Bagehot traced the line from the electorate, through the House of Commons to the Cabinet and was

guilty of such monstrosities as calling the Cabinet a committee of the legislative body, as saying that we are ruled by the House of Commons and that we have government by a public meeting. Whatever we may mean by popular government or democracy as words descriptive of the way our constitution works, we cannot mean that the people rule through their representatives in the House of Commons. For the Cabinet does *not* take its instructions from the House and Ministers are servants *not* of Parliament but of the Crown. Government policy and Government action are not determined by the Parliamentary Party, even when Labour is in power. This does not mean that Cabinets sit in ivory towers. Indeed, they sit uncomfortably on the compass point of a number of concentric circles being described by, first, all the Ministers and Junior Ministers; secondly, the Parliamentary Party; thirdly, Parliament itself; fourthly, their immediate supporting interests in the country; fifthly, all organised interests in the country; and sixthly, the mass of the electorate. And all these circles spin around and buzz the Cabinet and greatly affect what the Cabinet does. But it is the Cabinet that does what it does and no quicker way exists of losing face, forfeiting confidence and preparing its own destruction than for a Cabinet to appear irresolute, unable to take decisions or inclined to bend before the wind from the strongest quarter.

The present situation in the Labour Party is a variant of this. For the contention must mean that were a Labour Government elected to power on a political policy which was in one important particular radically altered by a subsequent annual conference, then the Prime Minister and his colleagues would be under an obligation to change their direction in conformity with that alteration. This imports again the idea of delegation from Labour Party members and trade unionists at large to those who elect representatives at the conference and then to those representatives. Those representatives in this setting are parallel to the House of Commons, with this difference; that a Government is a Government because it has a majority in the House and so owes its existence, as do the Members of Parliament, directly to the electorate (who have, moreover, consciously voted for it); whereas the conference representatives owe their existence to those who send them and those who send them certainly have no say, as such, in the creation of the Government.

It seems, therefore, that there is an even weaker case, constitutionally, for saying that a Party conference may in any sense direct a Government, than for saying that the House of Commons or the supporters of the Government in the House may do so. No doubt, a conference would in practice be more reluctant to cause a crisis

in the Party if that Party were in power as a major split might well bring down the Government. But this only underlines the difficulty of defining the present crisis in terms of some constitutional or democratic principle.

The particular blow which the Left-of-Centre might suffer if the Government implement the recommendations of the Royal Commission on Local Government in Greater London is the loss of its majority on London County Council. That body would cease to exist and the party political position on the proposed Greater London Council would be uncertain. The Commission recommend that the new Council should be directly elected with a member for each of the Parliamentary constituencies in Greater London. On the basis of present parliamentary and local government returns this would mean a Conservative majority of perhaps fifteen or twenty. The proposals would undoubtedly produce a more rational arrangement for the larger area and necessity as well as desirability argues for a single authority to cover at least this area for major planning and highway functions. Under the Commission's proposals, the new Council would also be the local authority for education and other less important functions. The Commission would, subject to certain qualifications, give the power of deciding individual planning applications to the new second tier authorities: the fifty-two Greater London Boroughs which would also, among much else, be responsible for the day-to-day running of schools in the area. These and other divisions of labour between the new Council and the new Boroughs will clearly have to be the subject of elaborate discussion.

Evaluation of the report of the Royal Commission is to be found in the answers to two questions; Is local government in London today so inefficient that radical reform, with its consequent destruction of existing administrative machinery, is necessary? Is local government in London worth preserving and modernising? The Commission has agreed that the answer to both these questions is yes. Perhaps other questions lie deeper even than these: What is the primary purpose of the English system of local government? Is it an exercise in democracy which it is hoped will result in effective administration? Or is the purpose to ensure good schools, good traffic conditions, good amenities? If the answer is that it is the first of these then a reform which reduced the number of the functions of elected bodies (such as transferring major highway and planning powers to central government departments) would seem to defeat that purpose. If the answer is that it is the second of these, then fewer tears would be shed at a further transference of functions from local authorities to other bodies. Two further questions ask themselves: is a government department, headed by a Cabinet Minister responsible to Parliament,

less democratic than, say, the London County Council? Why should it be assumed (as it seems to be by some) that the Greater London Council will be less bureaucratic than the L.C.C.?

All the obvious remarks have been made about the passing of the *News Chronicle* and the *Star*. A democratic form of government does not only purport to protect the right to criticism: it involves that right. The popular Press is an essential part of the working of democracy because our system entrusts such wide and deep powers to governments. The only device that makes this system at best satisfactory and at worst tolerable is the institutionalised opportunity for criticism. And Members of Parliament are not always more effective than journalists. We need both Mr. Nabarro and Mr. Randolph Churchill, just as we need Mr. John Osborne, the Bow Group, and Professor Titmuss. We need, in a word, all the criticism we can get. And the disappearance of any platform for able journalists is to be much regretted. In the last resort we could do without *The Times*. But we had better grapple Mr. Bernard Levin to our hearts with hoops of steel.

The Monckton Report

The Monckton Commission was appointed in 1959 to advise the Governments of the United Kingdom, the Federation of Rhodesia and Nyasaland, and the three territories of the Federation, in preparation for the 1960 review of the Federal Constitution, on " the constitutional programme and framework best suited to the achievement of the objects contained in the Constitution of 1953, including the Preamble." The Preamble recited, *inter alia*, that the association of Southern Rhodesia and the two protectorates in a Federation under the Crown " would conduce to the security, advancement and welfare of all their inhabitants, and in particular would foster partnership and co-operation " between them.

The general principles governing the Commission's composition were agreed to by the Prime Ministers of the United Kingdom and the Federation. Apart from the Chairman and the Vice-Chairman (Sir Donald MacGillivray) there were in fact nine members from the United Kingdom, four nominated by the Federal Government, three from each of its three territories, one from Canada and one from Australia. Of the thirteen members from the Federation five were Africans. In the United Kingdom the Labour Party declined Mr. Macmillan's invitation to nominate representatives, partly because it objected to the Commission's composition—in particular, it regarded the Commission as insufficiently representative of African opinion—and partly because the terms of reference failed to indicate clearly

that the Commission would be entitled to consider forms of association other than federation. The principal African nationalist parties in Northern Rhodesia and Nyasaland boycotted the Commission. Commentators, noting that few of the Commission's members could be suspected of radical leanings, incautiously predicted a cautious report.

In the event the Commission has recommended that the three territories be given a conditional right to secede. The forecasters have been confounded; Sir Roy Welensky and Sir Edgar Whitehead have been dismayed; the African nationalist parties have remained dissatisfied; and the United Kingdom Government has blandly announced its " warm gratitude to Lord Monckton and his colleagues for this important report which provides a valuable analysis of a very complex problem."

Even if the Monckton recommendations prove no more fruitful than the Radcliffe proposals for Cyprus (and this is unlikely) the Report [1] will remain a profoundly interesting and significant constitutional document. It dwells on the material achievements of the Federation and stresses the serious economic consequences that could be expected to flow from its dissolution. It points out that to break up the Federation would " amount to an admission that there is no hope of survival for any multi-racial society on the African continent and that differences of colour and race are irreconcilable " (para. 71). Therefore the Federation must be preserved—if possible. But it " can continue only if it can enlist the willing support of its inhabitants " (para. 84). And it is " too much disliked to continue in its present shape " (para. 81). Among Africans in the protectorates the very name of Federation has become " a hated word " (para. 41). There is no substance in the view that " if it were made clear even now that Federation broadly in its present form was an established fact, opposition would melt away "; and to hold the Federation together by force is " out of the question " (para. 75). " No new arrangement can succeed unless it obtains the support of African opinion " (para. 33). If that support is to be enlisted, drastic constitutional and other changes (including a change in the name of the Federation) must be made, and there must be held out to the Africans in the protectorates a prospect of opting for secession after a period of time, in the hope that this course, having been made available, will not be the one chosen.

[1] Report of the Advisory Commission on the Review of the Constitution of Rhodesia and Nyasaland (Cmnd. 1148 (1960)). See also Report—Appendix VI (Report by Committee of Officials): Survey of Developments since 1953 (Cmnd. 1149). Possible Constitutional Changes (Cmnd. 1150).

In 1953 it was known that the overwhelming weight of articulate African opinion in the protectorates was opposed to federation; the Federation was nevertheless constituted. In 1960 the proposition that the continuance of the Federation must rest on the willing consent of the governed is treated as a political axiom. It is true that the intervening period has seen the diminution of Britain's status as a world power, the growth of non-European influence in international affairs, the independence of Ghana, the Suez débâcle, Mr. Macmillan's "wind of change" speech, the end of British rule in Cyprus, the statement on the future independence of Kenya and the dash for freedom in the French and Belgian African territories. But the Monckton axiom is more than a tardy acknowledgment of inevitability. Once again, in Sir Keith Hancock's phrase, the calculation of expediency and the concept of right are interwoven strands; and the Monckton axiom has a moral content.

However, the majority of the Commission was not prepared to support an immediate right of secession, at least for the protectorates. A territorial government should be empowered to request the United Kingdom Government to take steps to ascertain, in such manner as the United Kingdom Government thought fit, the wishes of the inhabitants on the question; this power should be exercisable either after the territory had attained responsible government [2] or after a specified period of years following the coming into force of the new Federal Constitution, and should be exercisable for a limited period only. For two African members of the Commission any delay in recognising the right to opt for secession was too long. The axiom could not be qualified by a proviso; the conclusion to be deduced from it was inescapable. Accordingly, they submitted a Minority Report.

By no means all the detailed recommendations of the majority were unanimous; there are fourteen notes of reservation on particular topics. No attempt will be made to present a full summary, but the main proposals on matters other than secession may be stated as follows:

(1) The federal franchise should be broadened to bring a larger number of Africans on to the voters' roll, but it should remain qualitative.

(2) There should be parity of representation for Africans and Europeans in the Federal Assembly. On this matter, however, there were wide differences of opinion in the Commission.

(3) Further steps should be taken as soon as possible towards the attainment of self-government in Northern Rhodesia, and

[2] As the Minority Report points out, under this scheme it would be open to the Government of Southern Rhodesia to submit its request as soon as the necessary provision had been made by United Kingdom legislation.

there should be an African majority in the Legislative Council and an unofficial majority in the Executive Council. These constitutional changes should not be dependent on the revision of the Federal Constitution.

(4) Matters affecting the day-to-day life of the inhabitants should in general be entrusted to the territories, and the subject-matter of legislation should cease to be divided on a racial basis. Non-African education and agriculture, health, and all roads and prisons should become territorial subjects.

(5) No new form of association was likely to succeed unless Southern Rhodesia was willing to make fundamental changes in its racial policies. And the governments should give a lead to public opinion by taking measures to remove and, where appropriate, to outlaw unfairly discriminatory practices. In particular, legislation should be passed to prohibit persons who conducted their trades, businesses or professions by virtue of some sanction of the state from indulging in discrimination on the ground of colour, race or creed.

(6) New safeguards should be written into the federal and territorial constitutions for the protection of individuals and groups. Each constitution should incorporate a Bill of Rights modelled on the Canadian Bill of Rights.[3] The African Affairs Board, which had failed to command the confidence of the Africans whose interests it had been designed to protect,[4] should be replaced by federal and territorial Councils of State. The Federal Council would not be a committee of the Federal Assembly. Its members would be selected by the Governor-General and the four Chief Justices and would not be members of any legislature. Each Council would have power to consider and report on any legislation that discriminated unfairly against persons of any racial or religious community, and if its recommendations for amendment were to be rejected a suspensory veto would come into operation.

In some respects the Councils would resemble the Council of State established under the Kenya Constitution of 1958.[5] But they would have far more significant powers of delay, and the procedure for overcoming their suspensory veto would be difficult to operate; they would, moreover, have the function of reviewing and reporting on existing legislation for unfair discrimination, as well as on " unfairly discriminatory

[3] Now 8–9 Eliz. 2, c. 44 (Can.).

[4] *Cf.* Macdonald (1959) *Public Law* 362; Hasson and Armour (1960) *Public Law* 141.

[5] See S.I. 1958, No. 600, Part VI; S.I. 1959, No. 1302, ss. 3–8; Cmnd. 309 (1957), 369 (1958); Cmnd. 960 (1960), p. 4.

trends"; the power to require reservation of a Bill, which is vested in the Kenya Council and would continue to be vested in the councils for the two protectorates, would not be vested in the Federal or the Southern Rhodesian Council.

Of these two sets of safeguards, the judicial are possibly weaker than the institutional. No doubt the Commission considered whether something along the lines of the Nigerian guarantees of fundamental rights would be more appropriate—their merits and demerits were assessed by the Committee of Officials [6]—and its preference for the Canadian model suggests that it was not very enthusiastic about judicial review, for the Canadian provisions (unlike the Nigerian) are essentially rules of construction which can in any event be excluded by express words in an Act of the Federal Parliament. Nevertheless, the fact that such a proposal was made at all indicates how far prejudices in this country against Bills of Rights have been softened during the last two or three years.

A Federal Council of State might well present a formidable barrier against unfairly discriminatory legislative proposals. Whether this could conceivably reconcile any sizeable body of African opinion to the continuance of federation is a matter for conjecture. But in the long term (if there is to be a long term) the problem of membership would become crucial. The power of appointment could not be left indefinitely in gubernatorial and judicial hands (as the Commission impliedly recognised by the vagueness of its proposals for the Southern Rhodesian Council). And it would surely be too much to expect a government to perish rather than violate the independence of an extra-parliamentary body that was capable of paralysing its activities. A Council of State enjoying a government's general sympathy could do useful work, though it would act rather as a positive weapon against discriminatory practices than as an obstacle to objectionable measures sponsored by the government. A Council of State which did not enjoy that sympathy and which made itself a serious nuisance to the government would inevitably become the storm-centre of political conflict.

(7) The elements of subordination inherent in the present constitutional status of the Federation should be retained, except that (a) the Federal Parliament should be empowered to legislate with extra-territorial effect, (b) Federal Bills (other than those for the amendment of the Constitution) should

[6] Cmnd. 1150, paras. 12–15.

no longer be subject to reservation, and (c) the power to disallow Federal Acts should be abolished.

No other report on a Commonwealth constitution has aroused such widespread contemporary interest or so discordant a clamour of voices in the country concerned. The clamour will not be stilled for months, perhaps years; and the debate will live in history.

S. A. DE SMITH.

TWO PARLIAMENTARY EPISODES

UNTIL July 28, 1960, it could have been said with some confidence that the appointment of a peer as either Prime Minister or Foreign Secretary, whilst not contrary to any firmly established constitutional convention was at least in conflict with modern notions about ministerial responsibility and the primacy of the House of Commons. But in announcing the appointment of Lord Home as Secretary of State for Foreign Affairs the Prime Minister implied that it was not (on either account) necessarily so. The House of Lords, he suggested, had recently increased its prestige and authority, and it would set a bad precedent to concur in any fixed pattern of appointments as between the two Houses which would preclude the appointment of the best man for the job. Pressed to say whether this view embraced prime ministerial appointments, as its logic appeared to, he replied somewhat opaquely that that rested with the Sovereign since "the Prime Minister does not appoint the Prime Minister." [7]

Turning to the argument that the Minister primarily responsible for foreign policy should be personally answerable to the Commons, the Prime Minister stated that in the previous year the Foreign Secretary had been absent on business for 125 days, seventy-five of them whilst Parliament was sitting and had been able to answer Foreign Office questions on only five out of twenty-four possible occasions. It was not in fact necessary for members to be able to "question, attack and generally bully-rag" the Foreign Secretary since the Government as a whole were "answerable to the Commons in every Department of State."

The Commons might well ponder the implications of this view. Possibly it does not in these days matter very much that policy of which the Foreign Secretary is not the sole or major architect should be defended by him personally in any particular place. It may be that the notion of the individual liability of a Minister to give an account of himself to the House of Commons is anachronistic and should be allowed completely to wither away. Should the House of

[7] 627 H.C. Deb. 5s. c. 1995 (unrevised).

Commons, for example, care about its ability to question and bully-rag the Minister of Defence, the Service Ministers or the Secretary of State for Commonwealth Relations? None of them after all is engaged in the creation of individual or independent policy. It is all in varying degrees governmental and prime ministerial policy which in the end the electorate must judge. That is what in practice the collective responsibility of the government amounts to. But this increasing use of the language of collective responsibility does incidentally cut against what have traditionally been thought conclusive arguments against taking certain offices outside the House of Commons. Debate on this question used customarily to terminate in the proposition that " the Opposition would not stand for it." The Opposition at the moment, however, is not in a position not to stand for things. It may even turn out that Lord Curzon and Mr. Baldwin wrote their footnote to constitutional history prematurely and that there is still legitimate hope of the highest office for those who sojourn, perhaps unwillingly, in Another Place.

In July also the Commons considered, and referred to the Committee of Privileges, a further question of constitutional propriety. It is clear in principle that threats and inducements offered to Members of Parliament (except possibly by Prime Ministers and Whips) may constitute a breach of the House's privilege. Bribes and financial inducements intended to influence parliamentary conduct are a clear example. But what other forms of political pressure or minatory communication with M.P.s constitute a " threat "—as distinct from legitimate comment or persuasion—has never been precisely determined. The report of the Committee of Privileges,[8] made to the House on July 26 suggests that a prediction of a change in the existing political and constitutional system may in certain circumstances constitute such a threat. On July 6 Mr. Charles Pannell asked a question in the House about the distribution of fascist leaflets in Leeds. Several days later a Mr. Colin Jordan, organiser in chief of the British National Party dispatched to Mr. Pannell a letter of which the crucial sentence ran " No doubt when you clamour for our prosecution . . . you would do well at the same time to take into account the possibility that, in the resurgent Britain of tomorrow, it may well be you and your fellow racial renegades who face trial for your complicity in the coloured invasion and Jewish control of our land."

Summoned before the Committee of Privileges, Mr. Jordan agreed that he intended to influence Mr. Pannell's opinion and conduct but argued that his letter did not contain either in its language or in his own intention any threat of action on his part against the Member.

[8] H.C. 284 (1959–60).

He had, he thought, commented in a legitimate way on an historical possibility, as he might have suggested that the Government would do well to take note that certain courses of action might lead to the possibility of violence. No conduct on the part of himself or his party was concerned, but merely the future contingency of a new constitutional régime with new laws. The Committee concluded, however, that Mr. Jordan's conduct constituted a breach of privilege.

In his evidence to the Committee the Clerk to the House agreed that any political party whose programme envisaged radical changes in the constitution might be involved in breaches of the privilege enacted in the Bill of Rights, by threatening to impugn elsewhere proceedings in Parliament (though if the proposed changes envisaged retrospective reprisals authorised by legislative enactment the impugning would presumably be effected by Parliament itself). There still remains, however, the question as to what it is about present conduct or language which constitutes it a "threat." Erskine May and past Reports of the Committee of Privileges have used phrases such as "to attempt to influence Members in their conduct by threats," or "conduct having a tendency to impair an M.P.'s independence in the future performance of his duty." [9] All persuasion of course is an attempt to influence, but is an attempt made by threat when it is couched in a particular verbal form, when it has a particular effect on the recipient's mind or when the communication, whether it takes the form of statement, invective or prediction, is intended by the writer to have a particular effect (though it may in fact not have that effect)? The Clerk of the House did not think it relevant that the Member was not in fact deterred or that there was no degree of reality in the possibility envisaged by the writer. But can the description of a state of affairs outside the writer's control be brought within the concept of a threat? Could a member of the Campaign for Nuclear Disarmament who sought to influence his member's conduct by asking him to envisage the personal consequences of nuclear destruction be said to be threatening him?

Mr. Jordan's sentiments do not entitle him to any sympathy but the evidence given to the Committee on the question of principle suggests an unduly subjective criterion for judging threats to parliamentary freedom of speech and action. Jordan's "resurgent Britain" was regarded by him, the Report concludes, as "within the realms of possibility." More cases are clearly needed to illuminate this branch of the Law and Custom of Parliament. A letter threatening to stick pins in an effigy of the Colonial Secretary might help.

G. M.

[9] Erskine May (16th ed.), p. 123; *cf.* H.C. 118 (1946–47), p. xii.

THE FLEXIBLE CONSTITUTION

J. D. B. MITCHELL

"THE British Constitution is a flexible unwritten constitution of a unitary state." Some such general description of our constitutional framework has become habitual, yet almost each adjective is as doubtful as it is commonplace. Admittedly "unitary" or "federal" are not precise words, but the use of the adjective "unitary" has tended to obscure certain difficulties. If it is not known whether central and apparently unified institutions are really one or several,[1] or, if what are admittedly unified central institutions are subjected to different rules[2] in different parts of the area for which they exist, it is at least arguable that unitary is being used in a specialised sense. The "specialism" in the case of the adjective unwritten is also evident; to a greater extent than is sometimes believed unwritten merely means that the Constitution appeared after the manner of *Pickwick Papers* rather than that of *Gone with the Wind*, a process which often has the same sort of effect upon the role which institutions have in, or are given by, later legislation as the manner of the appearance of the *Papers* had upon the character of Mr. Pickwick. The misleading or specialised use of these adjectives is, however, well enough known. It is rather with the flexible character of the Constitution that the present article is concerned.

That our constitutional law or constitutional thinking remains flexible in certain branches cannot be denied. Such post-war developments in the Commonwealth as the acceptance of republics, the changed position *inter se* of the United Kingdom and the former dominions, are obvious enough, and a sentence at the end of a report

* The author is Professor of Constitutional Law in the University of Edinburgh.

1 Thus, the character of the House of Lords as a court is not clear. It may be a United Kingdom, English or Scottish court or a court for Northern Ireland; see T. B. Smith, *Judicial Precedent in Scots Law*, 49. It may be as a result of *I.R.C.* v. *City of Glasgow Police Athletic Association*, 1953 S.C. (H.L.) 13 and *Glasgow Corporation* v. *Central Land Board*, 1956 S.C. (H.L.) 1, that the House on its civil side may be either a United Kingdom court or not, according to subject-matter before it. Compare 1956 S.C. (H.L.) at 16 and 1953 S.C. (H.L.) at 22 and 29. On its criminal side, save in relation to treason it cannot operate as a United Kingdom court. An admittedly United Kingdom body can be uncertain whether the rules governing disqualification are United Kingdom rules or not: Report of Select Committee on Elections 1955 (H.C.P. 35).

2 The modern examples of the differences of Crown rights can be matched by older ones on a lesser scale of importance—see, *e.g.*, *Henderson* v. *Scott* (1793) M. 1072.

that " Their lordships will therefore report to the Head of the Federation of Malaya as their opinion that this appeal ought to be dismissed," [3] excites little interest. This flexibility remains in " Commonwealth " matters outside this particular field of relationship. The argument that the doctrine of ministerial responsibility may have to be applied in a modified form as a result of developments or proposed developments within the Commonwealth, has substance.[4] There are obvious difficulties in maintaining the doctrine against a United Kingdom Minister with full vigour up to the eve of " Independence Day " and at midnight simply transferring responsibility. Thus flexibility in the application of a rule outside the United Kingdom, which in its purely internal aspects may have acquired greater fixity or certainty, may still be claimed. This remaining flexibility may well be attributed to the fact that no clear " ideal " of the Commonwealth has ever been established. The " ideal " as far as there is one can only be expressed in terms of very general political aspirations, and not in rules which have even that minimum of precision which is necessary for the formulation of rules of law. Moreover concern remains with what is to come, rather than with what has been. Thus the settlement brought about by the events from the Imperial Conference of 1926 to the Statute of Westminster, 1931, did not have the effect of imposing any pattern of thought; events remained in control. That settlement was fortunate in that, apart from certain practical rules of convenience, it was a compromise which pointed clearly in no specific direction. The inherent ambiguities in the Balfour Report which were emphasised by Dr. Latham [5] were put more forcibly by Mr. Hughes.[6] These ambiguities had not been resolved before the events of 1939–45 led to the abandonment (in part at least) of one of the few rules which Dr. Latham had isolated as fundamental law of the Commonwealth,[7] and no generally accepted rationalisation of events themselves has as yet emerged, which could be said to be, or embody, the legal conception of idea of the Commonwealth, and which by its existence might inhibit constant adaptations of institutions and ideas.

That there are risks in such a state of affairs is obvious. The vagueness of the political conception of the Commonwealth can

[3] *Sajan Singh* v. *Sardara Ali* [1960] 1 All E.R. 269. This was written before the note in 76 L.Q.R. (1960) 332, had appeared.

[4] Even though it may lead to a somewhat confused situation; see, *e.g.*, 607 H.C. Deb. (5S.), col. 248 *et seq.*

[5] *The Law and the Commonwealth*, Sect. II.

[6] *The Splendid Adventure*, p. 149, and in the Australian House of Representatives Deb. Vol. 154, quoted in Mansergh, *Documents and Speeches on British Commonwealth Affairs* (1931–52).

[7] *The Law and the Commonwealth*, p. 583. In other respects too those of us who had learnt the fundamental rules of the Commonwealth in the few years before 1939 had to unlearn them in 1946 and thereafter.

become such that the conception becomes valueless. There are though equal dangers when a pattern of ideas about the "ideal" shape of constitutional arrangements has become set. Internally it is possible that this situation is developing. Most obviously there is an ideal Cabinet both in size and operation to which it is hoped, or expected, that modern Cabinets will approximate. To the dangers and difficulties of this situation Mr. Amery has drawn attention.[8] The difficulties in relation to the Cabinet are familiar enough and are, in any event, probably the inevitable consequence of certain other fixed patterns of thought; they are not therefore of immediate concern here, save as an illustration of one cause and one consequence of that loss of flexibility. Paradoxically that loss may well come as a result of taking what is recent as being traditional and so sacrosanct. The opposition to a Cabinet secretariat and to Cabinet minutes was to a large extent based upon tradition; yet the tradition which was looked to was recent, the older tradition, at least as to minutes, was neglected or forgotten, and has only recently been re-emphasised.[9] The consequence of the loss of flexibility (which may be due to this shortness of perspective) is the obvious one, that a machine designed for one purpose is being used for quite different purposes without any real adjustment. This result is all the more likely if a tradition is simply accepted and its origins are not looked at. The machinery of government as it had developed at the end of the nineteenth century and the beginning of this was the result of steady growth during a period in which the nature of government activity was relatively stable, and as a result machinery was well adapted for its purpose. The perfecting of governmental machinery unfortunately coincided with a fundamental change in the nature of governmental activity which Dicey[10] saw and regretted, and which Maitland had earlier seen, perhaps with less regret.[11] In that instance it was an unhappy chance of history that a climax of one development should coincide with the start of another. While the Cabinet affords a good illustration of this, it does not stand alone. At the time when one system of boards had demonstrated the weakness of that form of government, a fresh system was just being created,[12] and again shortness of perspective or narrowness

[8] *Thoughts on the Constitution*, p. 86.

[9] Aspinall, *Cabinet Council*, p. 194.

[10] *Law and Opinion*, particularly the introduction to the Second Edition.

[11] *Constitutional History*, p. 417 *et seq.*

[12] While the Gilmour Committee was reporting "In our view a fundamental objection to the Board system lies in the division of responsibility which it implies or suggests; it seeks to combine ministerial responsibility with an assurance of some measure of independence to the Boards. Yet it is clear that however the powers of Boards may be defined the ultimate responsibility must constitutionally rest with the Minister"—(Cmd. 5563, § 18), the process of developing another set of Boards, to which the same "fundamental objection" could be

of consideration did not allow the history of one to influence the development of the other.

Yet essentially the rigidity comes not from a pattern of institutions, but from a pattern of ideas. In particular two groups of ideas which dominate in this way are those which are concerned with the nature of constitutional law, and public law generally, and with the place and role of Parliament. Constitutional law has tended (except as to theories of sovereignty and the like) to stand outside the general stream of jurisprudence. A partial explanation of this may be that the application of some theories, for example some of those of Kelsen, is happier in relation to constitutional law than it is in relation to other branches of law.[13] However explicable, this separation is noticeable in two ways. On the one hand the analysis of rights and duties tends to be carried out within the framework of private law relationships and the results are applied in the public law field, even though sometimes they are not wholly convincing or satisfactory in result when thus applied.[14] On the other hand constitutional law tends to be the home of jurisprudential lost causes. Vestiges of natural law theories remain in that field long after those theories have ceased to be important in other fields.[15] The concentration of jurisprudential theory upon private law relationships is both natural and understandable, granted the interest of the problems which there arise, and granted the circumstance that in constitutional law the influence of facts (rather than theory) is felt more strongly. It is all the more understandable since the idea that public law can only be separated for convenience of study, and has no real separate existence, has ruled for so long. Granted that assumption, there is no need to study the institutions of public law with the same intensity as those of private law. A theory evolved in one context can be applied in the other. That concentration

taken, was starting in the London Passenger Transport Bill, 1931; see the comments of Lord Morrison, *Government and Parliament*, p. 255. The Report of the Select Committee on Nationalised Industries (1957) H.C. Papers 304, §§ 10 to 14 is here relevant.

13 Thus events such as those of 1688 could be most easily explained or accounted for in terms of law by an application of his theories, which have also their application to continuing institutions; compare Professor Beinart—" Sovereignty and the Law," *Tydskrif vir Hedendaagse Romeins Hollandse Reg*, 1952.

14 Thus the conditions of the public service make some departures from the general law of agency necessary or desirable. See Crown Proceedings Act, 1947, ss. 35 and 50. Compare *Reardon Smith Line v. Ministry of Agriculture* [1959] 3 All E.R. 434, 458, and *Robertson v. Minister of Pensions* [1949] 1 K.B. 227, or, in a slightly different context, *Bloomstein* v. *Railway Executive* [1952] 2 All E.R. 418, *McPhail v. Lanarkshire County Council*, 1951 S.C. 301, 313 and 320, and *Commissioners of Crown Lands* v. *Page* [1960] 2 All E.R. 726 and the cases in note 40, *infra*.

15 Consider the rules governing the interpretation of taxing statutes and statutes infringing individual liberties, rules which are founded upon conceptions of " natural law " rights to life, liberty and property.

may be understandable, but it does not follow that it is advantageous in result, particularly if it means that ideas in the field of public law tend to be underdeveloped or static. Fundamentally, however, it is probable that the separateness or distinctiveness of constitutional law and public law generally is not so much attributable to relative underdevelopment because of this chance concentration upon private law, but rather is due to major differences between the two types of law, which have remained insufficiently noticed because of that concentration. It is not so much that public law has, from a theoretical point of view, been looked upon as something of a backwater as that lack of development has caused what is really a separate stream to be regarded, from that point of view, as merely a backwater. Whatever the explanation it is probable that greater attention to the analysis of the relationships of public authorities *inter se* and with private individuals would be profitable.

Be that as it may in connexion with more detailed rules of law, in connexion with more general theories this " separateness " or isolation brings both gains and losses. The survival of natural law theories may be beneficial, as tending to preserve liberties. The continued emphasis on some other theories is not necessarily so, in so far as it involves a too ready acceptance of traditional theories. Thus, the use of the idea of a sanction as a distinguishing mark of law clearly had its influence upon Dicey's distinction between law and convention.[16] This has often been commented on in that context,[17] but the influence of the Austinian conception is much wider. The limitation of the role of the courts in " enforcement " is, or ought to be, apparent over the whole field of public law, and a failure to observe or to allow for it has had, and continues to have, important general consequences which have not been fully recognised, partly because discussion of the nature of constitutional law, where it exists, has tended to centre around the problems of convention, but chiefly because of this habit of regarding public law, at most, as an appendix to private law.

The discussion in the context of convention has, however, emphasised the importance of the meaning of the linked words " court " and " enforcement." Each word in the field of public law tends to have special meanings. Leaving on one side administrative tribunals there are various other courts of a specialised nature and with specialised functions. In matters which fall to be dealt with by them not only the

[16] *Law of the Constitution* (10th ed.), p. 24. There is also a temptation to see a reflection of Austin's terminology in Dicey's alternative name for convention—" constitutional morality."

[17] See, *e.g.*, Professor Wade's Introduction to the *Law of the Constitution* (10th ed.) clxxxvii–clxxxviii and Jennings, *Law and the Constitution* (5th ed.) 103–104.

forum for enforcement, but also the scope and methods of enforcement, show differences from what has become familiar in the traditional judicial system. The Public Accounts Committee should be regarded as a court policing the Appropriation Act, and its power of " surcharge " could be as real as that of the district auditor, even if it is more rarely used.[18] The financial " courts " of this type are familiar enough in both local and central government. In local government the parallel is obvious where the district auditor operates; it is not so obvious, nor is the system so effective, where either there are borough auditors in England or auditors appointed by the Secretary of State under Part X of the Local Government (Scotland) Act, 1947. Such persons cannot as easily attain a position akin to that of the Comptroller and Auditor General as can a district auditor. Although it is true that differences of history and of the character of the bodies dealt with have tended to make district auditors somewhat narrower in outlook than the Comptroller and Auditor General, nevertheless there is a kinship in systems and result. In both cases it is through these systems that many legislative provisions are policed. In regard to the central government it is indeed probable that such is the only method, no individual having a title to sue, if he founds his claim (as often he must) simply upon the Appropriation Act.[19]

It may well be true of the financial provisions of public bodies, other than local authorities, that for like reasons they will normally escape the control of the ordinary courts. Certainly, in regard to local authorities it is these extrajudicial methods which are the most effective. Even though there may exist other possibilities of challenge, these possibilities are rarely used, and are inappropriate to any consistent review.[20] In addition, so long as review is centred on the ordinary courts difficulties abound. It may still be possible to accept, as a formulation of law, the principle enunciated by Lord President Inglis in *Nichol v. Magistrates of Aberdeen*—" It is in the jurisdiction of this court to interfere and control the proceedings of a municipal council upon sufficient ground—upon the ground either that there is plain excess of power on the part of the council, or upon the ground that what they are proceeding to do is plainly against the interests of

[18] See *Epitome of Reports from P.A.C.*, pp. 605–607 and 633, and for the Committee acting as a judge between departments, p. 337.

[19] Duties under that Act being regarded as owed to the Crown or to Parliament: *R.* v. *Lords Commissioners of the Treasury* (1872) L.R. 7 Q.B. 387. The policing can be done, albeit somewhat inefficiently, by the P.A.C.; see Sixth Report 1955–56 and Special Report 1956–57 (H.C. Paper 75).

[20] Cases such as *Prescott* v. *Birmingham Corporation* [1955] Ch. 210, or *Graham v. Glasgow Corporation*, 1936 S.C. 108, arise only where a particular matter has become one of acute political controversy, or else some sectional economic interest is adversely affected. The relatively minor matters in which ordinary unorganised citizens might reasonably be interested tend not to be pursued.

the community which they represent; but where there is no excess of legal power it certainly requires a very strong case to interfere with the discretion which the law vests in the municipal council in the first instance." [21] Yet, what would now be regarded as "a very strong case" is an even stronger one than that which would have been accepted in 1870.[22] So far as discretionary powers are concerned (which are increasingly those which matter) the courts have come more and more to restrain themselves and to rely on the check provided by administrative devices. These are urged upon courts,[23] and at times accepted,[24] irrespective of their effectiveness.

This is not entirely a modern habit, though its consequences are the greater because of modern developments. There has been a development of an attitude of mind, summed up in such phrases as—"When by-laws are passed by elected representatives of the people, chosen because of their fitness to serve in that capacity, such persons may be trusted to understand the requirements of the public even better than judges." [25] There has also grown a reliance upon, or deference to, expertise, particularly that to be found in public departments.[26] This reliance has become still more noticeable in later cases, and the effect of such developments is enhanced by developments in other rules of law which have become more rigid and formalistic. The older cases on the liability of superior and inferior servants of the Post Office turn as much upon the existence of internal checks upon the probity of such servants as upon any idea of Crown service.[27] The latter ideas only become dominant in *Bainbridge v. P.M.G.*, [28] and

21 (1870) 9 M. 306 at 308, a formulation which, in Lord Deas' understanding of it (at p. 311), implied the same sort of jurisdiction as that which, in England, was described by Lord Greene in *Associated Picture Theatres, Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, 233–234.

22 Compare, for example, *Blair* v. *Smith*, 1924 J.C. 24 when the majority of the court was sceptical about the necessary foundation for a condition imposed on granting a licence, yet would not sustain a challenge to it, or *Sutherland* v. *Wick* (1905) 7 F. 374.

23 *British Oxygen Co., Ltd.* v. *South West Scotland Electricity Board*, 1955 S.C. 440, 449.

24 *Watt* v. *Kesteven C.C.* [1955] 1 Q.B. 408, 430. Compare *Huckstep* v. *Dunfermline District Education Committee*, 1954 S.L.T.(Sh.Ct.) 109 and *Parlane* v. *Perth and Kinross Joint County Council*, 1954 S.L.T.(Sh.Ct.) 95 for the attitude of a court in a similar matter where an appeal was given.

25 *Aldred* v. *Miller*, 1925 J.C. 21, 25, *per* Lord Justice-Clerk Alness.

26 Such reliance was influential in moving the court to uphold a conviction in *Somerville* v. *Longmuir*, 1932 J.C. 55, despite doubts as to the validity of the regulations under which it was obtained. The substance of these doubts were brought out in *Somerville* v. *Lord Advocate*, 1933 S.L.T. 48, in which, upon proper examination, the same regulations were held invalid.

27 See *Farrier* v. *Elder and Scott*, F.C. June 21, 1799, and *Whitfield* v. *Lord Despencer* (1778) 2 Cowp. 754. There was also present the reliance upon a concept of a "fund," later generally rejected in *Mersey Docks and Harbour Board* v. *Gibbs* (1866) L.R. 1 H.L. 111, and which had earlier been rejected in Scotland, see *Virtue* v. *Police Commissioners of Alloa* (1873) 1 R. 285.

28 [1906] 1 K.B. 187, largely as a result of *Raleigh* v. *Goschen* [1898] 1 Ch. 73.

thereafter operate with rigidity, the rules losing any flexibility which they might have had in their earlier form. Similarly, old roots can be found for the modern conception of the effect of the Appropriation Act.[29] Such rules were necessary unless the whole business of administration was to be transferred into the courts. So it was said "No member of the community has a title to call the respondents to account generally for their maladministration of the common good of the burgh. The respondents are not answerable for their administration of the burgh property, as if they were trustees for the community. Except in so far as its actings may interfere with the personal uses which an inhabitant is entitled to make of the burgh property, the corporation is only accountable to the Crown for its administration of that property." [30] This argument remains sound, even when questions of administration are no longer limited to those related to funds or property.[31] The strict limitations inherent in the rules when first adopted and which were then appropriate may not be so in changed conditions. Moreover the soundness of the arguments is, very largely, dependent on the inappropriateness of the forum. That inappropriateness is felt to exist as a result of a general climate of opinion about the nature of the courts—their neutrality and hence their aloofness in all matters tinged with public policy, and also as a result of their techniques. These techniques limit the effectiveness of the courts either because matters in dispute are not susceptible of proof by the accepted methods, or because the accepted methods if rigorously applied in the field of public affairs cause difficulty. The decision of a company is simply that, and, in litigation, it is reasonable that the whole process by which it was made should, if necessary, be exposed. In relation to public authorities the situation is not always similar. The relationship of officials to the council of a local authority is not always the same as that of servants of a company to the board of directors.[32] In the field of public law there abound difficulties akin

[29] *Stewart* v. *Bothwell* (1742) M. 7337, an attempt by tradesmen to secure payment out of appropriated moneys for work done. The action was held incompetent—"The remedy with respect to the present officers of the mint was thought to be none other than application to the Treasury, that being the court to which only they were to account." Contrast *Craigie* v. *Hepburn*, F.C. Dec. 22, 1807.

[30] *Grahame* v. *Magistrates of Kirkaldy* (1882) 9 R.(H.L.) 91 at 96, *per* Lord Watson. See, too, *Conn* v. *Magistrates of Renfrew* (1906) 8 F. 905. Erskine's explanation was (Inst. I.IV.23) that "maladministration of borough revenues is to be considered rather as a matter of public government than the subject of a popular action in a court of law."

[31] *Watt* v. *Kesteven C.C.* [1955] 1 Q.B. 408.

[32] See, *e.g.*, *Robert Baird, Ltd.* v. *Glasgow Corporation*, 1935 S.C.(H.L.) 21, 26–27, *per* Lord Tomlin. Apart from structure the nature of the work affords some justification for departure from normal rules, even if rules such as those carried to an extreme in *Duncan* v. *Cammell Laird and Co., Ltd.* [1942] A.C. 624 be not accepted in their entirety.

to those which prevented any effective use being made of the " public interest " element of *Nordenfelt* v. *Maxim Nordenfelt* [33] until the emergence of the Restrictive Practices Court which made possible the development of new procedures and techniques. Further the traditional methods of enforcement are often inapt and cannot easily be effectively adjusted.[34]

Again, these difficulties are familiar. They spring from the concentration upon enforcement in the ordinary courts. In those courts remedies are often hard to find because rules which were once flexible (and rational in their foundation) have become rigid (and irrational in their application), and because those courts have come to accept a limited role. To some extent the two matters are related, the increasing rigidity being a method of obtaining limitation, but to some extent they are independent of each other. That concentration and the difficulties which have resulted from it have led to the belief that all that " law " can do is done within these narrow bounds. Anything more must be left to administrative regulation, and so it follows that beyond the narrow confines of what can be entrusted to the courts, and within which they are prepared to work, all is discretionary. Indeed the area of " law " is really delimited by the second qualification, and the limits thus set, are, for the reasons already given, distinctly narrower than those which would be set by the first qualification. The consequences of this extend far beyond problems of the remedies of individuals. In the first place, the bodies which are in truth " courts," but which because of this concentration are not recognised as such, are looked upon with disfavour. Above all they are either not developed or are not developed systematically. In the second place there is an effect upon the whole administrative machinery of the state. Controls of law and of administrative policy are vested in the same hands, and become indistinguishable. This simply increases the forces which in any event tend towards centralisation, since the same body or central department has the power to decide what can be done, as well as what should be done. It is true that in the case of local government audits an overt recognition is given to that,[35] but this need not be so, and it is undesirable that it should be so. Yet modern statutes, read in the light of the present legal situation, cause this situation to arise more and more frequently.

[33] [1894] A.C. 535.

[34] Thus in *Pride of Derby and Derbyshire Angling Association, Ltd.* v. *British Celanese, Ltd. and Ors.* [1953] Ch. 149, 181. Lord Evershed M.R., after propounding sound Diceian doctrine of equality before the law, and mentioning difficulties, adds " So the practice is adopted in the case of local authorities of granting injunctions, and then suspending them for a time, long or short." See, too, *Att.-Gen.* v. *Colchester Corporation* [1952] Ch 586.

[35] Local Government Act, 1933, s. 229; Local Government (Scotland) Act, 1947, s. 202.

There is uncertainty about what is a general direction to a nationalised industry.[36] An eventual decision as to what is such a direction will be taken by the Minister giving the direction, and such a decision will be practically unchallengeable save in Parliament, where the argument will not, in essence, be directed to the legal situation. Whereas in other cases a statute, once it has reached the Statute Book, has an independent life, to a great extent it has not where the statute operates in the field of public law. While there can be advantages in that situation there are more serious disadvantages, some of which have been mentioned.

It remains true that in some ways the machinery of government is necessarily one. Without the harmony which can come from this element of unity the general aims of government are not likely to be realised. That consideration is one which can also tell heavily against the use of the ordinary courts. It is one which has played a part in the development of the present situation, and which can matter. There is in the ordinary processes of litigation the appearance of conflict. The lawyer may well recognise that, in particular cases, the appearance is false. The ordinary member of the public will not, and here he is important. The spectacle of different branches of the administration apparently at loggerheads and in open conflict is not one which is likely to increase the esteem of the whole machinery. Issues such as those involved in *Newcastle-under-Lyme Corporation* v. *Wolstanton Ltd.*,[37] while they may have some jurisprudential interest, will increasingly decide (in substance) whether certain losses are to be borne by the public as taxpayers or as ratepayers, and again, to decide such matters the machinery of the ordinary courts is not always appropriate and is generally expensive.[38] Nor is an admixture of administrative and judicial procedures in different bodies always likely to be satisfactory. Such provisions as those in section 16 (*a*) of the Housing and Town Development (Scotland) Act, 1957, either render the intervention of the court automatic, or make the preliminary proceedings valueless; the result is likely to be unsatisfactory in either event,[39] since the difficulties which face an ordinary court remain.

Thus it is that insistence upon the " ordinary " courts produces a situation in which those courts are less and less ready to intervene,

[36] Report of select Committee on Nationalised Industries, 1958 (H.C. 187–I) Q. 65 (Sir John Maud) and the Report of the same Committee in 1957 (H.C. 304) QQ. 600–609 (Sir John Cunningham) and Q. 295 (Mr. Thomas Johnston), and see Apps. 5 and 10 to that Report.

[37] [1947] Ch. 427.

[38] *Cf.* Coal-Mining (Subsidence) Act, 1957, s. 5.

[39] Compare earlier cases such as *Board of Supervision* v. *Local Authority of Montrose* (1872) 11 M. 170, or *Board of Supervision* v. *Local Authority of Lochmaben* (1893) 20 R. 434 in which the courts were placed in a like position.

and from many points of view this reluctance can be justified. Further, even when the courts are prepared to make some concessions to the necessities of public law the heritage of private law, which must there be felt strongly, is such that proper and independent development of these concessions is necessarily impeded.[40] The parallel with the situation in regard to monopolies before the creation of the Restrictive Practices Court is obvious.[41] Because of this inadequacy controls both of law and of policy tend, in practice, to be more and more administrative. That process forces a centralisation which in itself may not be desirable, but it may also lead to obscuring lines of responsibility. Practical dependence is concealed by a facade of legal independence, a concealment which may even be perpetuated in modern legislation.[42] The disadvantages of this process are emphasised when consideration is given to the second aspect of constitutional rigidity, to which reference has been made. At this point it is sufficient to notice that while the disadvantages of the present situation are recognised, amelioration is sought merely through other administrative devices, notably the " Ombudsman " (sometimes thinly allied to existing judicial machinery[43]) for general administrative purposes, or such bodies as the Council on Tribunals for other purposes. At best such solutions can afford partial answers to part of the problem. They may be able to do something to calm discontented individuals. Even that cannot be foretold with certainty. Differences in the size of a country, as well as in the whole pattern of constitutional development and thought, render prophecies founded upon experience elsewhere uncertain. Those differences can be more significant than they appear to be at first sight, and it is probable that the problem of judicial review is not even the same in Scotland as it is in England. Hence it does not follow that because an administrative device has been successful,

[40] See *Commissioners of Crown Lands* v. *Page* [1960] 2 All E.R. 726. Questions of the relationship of the Commissioners of Crown Lands to other governmental instrumentalities, which were not fully argued there, are simply obscured by use of the umbrella term " the Crown." Problems in relation to such interferences with leases cannot be rationally dealt with if a line of cases dealing with the entirely different conditions of " evictions " by private landlords is taken as a starting point. While the case holds out some hope of a proper development the hope is likely to be frustrated. Compare *Magor & St. Mellons R.D.C.* v. *Newport Corporation* [1951] 2 All E.R. 839.

[41] The weary length of the litigation which started as *British Oxygen Co., Ltd.* v. *S.W. Scotland Electricity Board*, 1955 S.C. 440, and which has twice reached the House of Lords before coming to trial on the substance of the dispute, together with the conflicts of opinion in the House of Lords on the second occasion in *British Oxygen Gases, Ltd.* v. *South of Scotland Electricity Board*, 1959 S.L.T. 181, point the moral. See, too, " Economic Issues in the Courts," 1959 S.L.T. 213.

[42] Consider the Report of the Scottish Local Government Law Consolidation Committee (Cmd. 8993) and clause 4 (2) of the draft Bill prepared by the Committee (Cmd. 8992) and the subsequent Government Explanatory Memorandum (Cmd. 9435) which preceded the Police (Scotland) Act, 1956.

[43] " The Ombudsman in Britain," by L. J. Blom-Cooper, *ante*, pp. 145, 150.

within its appropriate sphere, elsewhere it will be so here. More importantly, what is the appropriate sphere of such bodies must remain limited. Institutions such as those envisaged in the discussions of parliamentary commissioners and the like could not in any event deal with the many legal problems of administrative law which do exist in relation to both institutions and individuals. Even many of the problems related to the latter, who are primarily thought of in this connection, would escape the control of an Ombudsman, but above all the problems to which a modern state gives rise are not to be dealt with by methods which look so much to the individual case, and not to the generalised standards of law. The problem is not of finding solutions in cases of occasional administrative bungling, it is of finding a means of development of a proper corpus of law to deal with the machinery of a modern state. While administrative devices can be partially successful in solving the first and lesser problem, they can do nothing to provide a solution for the second and fundamental problem. Even in relation to the first, administrative remedies are likely to prove inadequate where what is required to do justice is not merely the rectification of a decision but some element of compensation for loss which has resulted from wrongful administrative activity or inactivity. The tardy rectification is an empty victory satisfying the conscience but not the pocket. A judgment can satisfy both.

What is necessary is to pick up the rejected stone—control through a court. That stone was rejected because of the difficulties with which the ordinary courts found themselves faced, and which have already been elaborated, and because past experience of an administrative court was not, to say the least, always happy. The Privy Council in Scotland often deserved the abuse directed at it. Yet it could be a court in the sense with which we are now concerned. It could, and did, regulate the relationship of administrative bodies [44]; it could be, and was, a court wherein life, liberty and property could be protected against administrative abuse [45]; abuse of public power was one of the recognised heads of its jurisdiction.[46] The advantage of such a body lies in its intimate knowledge of administrative machinery and procedures, and in the greater possibility of procedural changes which can facilitate the process of control, and the results obtained from such a

[44] See, *e.g.*, *Register of the Privy Council of Scotland* (Third Series) Vol. XIII, p. 40, in relation to highways in Linlithgowshire; Fountainhall i, 452, determining a dispute between Edinburgh and Leith; *Forrester* v. *Forbes* (1683) Fountainhall, i, 234, or R.P.C. (3.s.) Vol. XI—Petition of John Sutherland for the return of excise unjustly exacted. See, too, Dr. Malcolm's introduction in *Minutes of the Justices of the Peace for Lanarkshire*, 1707–1723, pp. xviii and lxi.

[45] *Forrester* v. *Forbes* (*supra*), Register of the Privy Council of Scotland (Third Series) Vol. XIII. Act in favour of Peter Bruce, p. 427, or in favour of John McHeron, p. 554. Many other illustrations could be found.

[46] Ersk. Inst. 1.III.9: Kames, *Elucidations* 228.

body can be more forceful than any obtained by purely administrative means. If a Ministry of Education promulgates an unhappily worded circular, a judicial declaration of the limits of ministerial powers of intervention has greater force than a parliamentary reply and is all the more valuable if it can be obtained without cost.[47] It is certainly more durable. It is by such means that the degree of ministerial control can be regulated even in that most difficult field of finance.[48] Indeed it is one of the major advantages of such controls that, in the hands of properly constituted courts, legal controls go beyond legality and thus achieve not merely all that could be achieved by administrative controls but more also.[49] By such means can some of the dicta in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation,*[50] have real life, and a happier balance be struck between charitableness to, and watchfulness of, the administration. Reality here matters above all, and is not always capable of attainment by administrative methods. The activities of the Council on Tribunals may simply result in establishing " safe " methods of reaching certain results, being concerned with standardising and regulating procedures and not with substance.[51] As far as individuals are concerned their discontents, where they exist and have substance, are likely to be founded upon a muddled mixture of law and unhappy administration. The provision of an inadequate administrative remedy to supplement an inadequate curial one is not, in such cases, enough.

47 *Syndicat autonome du personnel enseignant des Facultés de Droit,* C.E. Jan. 4, 1957, R.D.P. 676. In his note M. Waline comments: " Le Conseil d'Etat a été charitable pour l'administration," yet despite this charity, limits of intervention in academic affairs were indicated with an enduring firmness which would be entirely absent from an " explanatory " parliamentary answer, even if that adopted an interpretation similar to that given by the Conseil.

48 *Rommel.* C.E. Jan. 8, 1954, R.D.P. 797. Though the note of M. Waline (R.D.P. 1954, 789) emphasises that the existence of a single general administrative jurisdiction at the side of the ordinary general civil jurisdiction may not always produce a satisfactory solution, but it emphasises even more the need for some form of curial control as well as control by administrative devices, and shows how that court properly composed can be bold in dealing with intricate problems, without being hostile to the administration.

49 M. Waline in his comments upon *Legros,* C.E. June 20, 1952, in R.D.P. 1953 at 727 emphasised the emergence and force of a concept of " moralité administrative " as distinct from one of simple legality, a concept which emerges in " la règle, non écrite, non légale, obligeant l'administration à se mettre dans les meilleures conditions pour apprécier au mieux ce que demande l'intérêt public." This it can do because the diverse elements in its composition, each of which appeals differently to the different parties before it, so that a position of respect is built up, after the manner of the growth of the office of Comptroller and Auditor-General.

50 [1940] 1 K.B. 223.

51 Compare *Ex p. Woodhouse, The Times,* June 18, 1960. Many of the provisions of the Tribunals and Inquiries Act, 1958, may suffer from the same defect, and consider *Benjamin* v. *Minister of Pensions and National Insurance* [1960] 2 All E.R. 851. Perhaps, too, the fault, which invalidated the Minister's decision, in *R.* v. *Minister of Housing and Local Government, ex. p. Chichester R.D.C.* [1960] 2 All E.R. 407, was merely one of form, not substance.

Even more important such remedies do little or nothing to cure the defects within the administrative machine itself. It is only if some external body can intervene that present compulsions to centralisation can be checked, and that bodies which are created by law with some degree of autonomy will enjoy that autonomy in fact. With the increased scope of government activity the maintenance of the autonomy of the public bodies which are not created as parts of the departments of the central government is important. Within the field covered by the departments properly so called there is such a flood of problems already in existence that a barrier against any increase by a spate of problems from elsewhere becomes all the more important. To impede the central government from stretching out into the field of other public authorities and at the same time to force these other authorities to exercise their powers of their own volition, is important even if only from the standpoint of administrative efficiency. That barrier and that compulsion cannot be administrative, the pressures are too strong for any administrative device to be effective, nor can they be found in the ordinary courts, since there forms of action, procedural rules and habits of thought are inapt for this purpose. The aloofness of those courts, which is one of their merits, is here a disadvantage. It is only if the court has an intimate acquaintance with the administration that there can be found the blend of concern for administrative morality and charitableness to the administration which is so often needed in this field. Without that acquaintanceship charity is likely to be excessive and the regulation of morality to become a matter of form only, or else only to have practical effect in those extreme cases which are unlikely to arise.[52] It is moreover only in such courts that the problems of working out new rules in relation to such matters as title to sue are likely to be solved. Without such courts the detailed heritage is likely to be too powerful to allow easy adjustment of old rules to new patterns, and such adjustment is much needed.

Thus on the one hand our general constitutional arrangements are upset by adherence to the dogma of " the ordinary law in the ordinary courts," and instead of abandoning that dogma we seek to remove some of the resulting disadvantages to the community by partial remedies which can be reconciled with it. It is possible that those remedies might be adequate as far as individuals are concerned,

52 Consider the opinions expressed in *Earl Fitzwilliam's Wentworth Estates, Ltd.* v. *Minister of Housing and Local Government* [1952] A.C. 362 in its various stages on the theme of improper administrative motive as a ground for attacking a decision. The nice balance which is evident in *Adams* v. *Secretary of State for Scotland,* 1958 S.L.T. 258 is not often evident, and cannot be in modern times. Consider too the distinctions drawn in *Gateshead Union* v. *Durham County Council* [1917] 1 Ch. 146, 160.

though not universally so. What they will not do is to do anything to redress the general unbalance in constitutional machinery. That results in part from the dogma just referred to, but to it another contributes even more. That other dogma is the belief in the omnicompetence of Parliament. Proper respect for Parliament has led to too great concentration upon parliamentary controls. At the same time proper respect for parliamentary traditions makes any adjustment of the parliamentary machinery difficult. "I am also a little anxious about how this would spread with other Select Committees of the House because there the work, you see, has not entailed the bringing in of outside commercial staff. It has usually depended upon the excellent Clerks of the House, for example, the Estimates Committee, and I think we want to be very careful. We are on the edge of an innovation here which we want to watch very carefully before we actually undertake it." Such was the response of Mr. Butler as Leader of the House to the suggestion that the Select Committee on Nationalised Industries might receive help from outside.[53] That answer could be regarded as itself traditional, since nine years elapsed from the report of the Select Committee on Public Monies in 1857 to the Exchequer and Audit Departments Act, 1866. What is arguable is whether that traditional attitude, which has become more pronounced in this century, is helpful in present conditions. It is doubtful if, today, the speed of gentle evolution from horseless carriage to motor-car is an acceptable speed in the development of constitutional machinery. That example of an attitude of mind does not stand alone in this context.[54]

This rigidity in the conduct of Parliament is all the more important because of the general attitude to Parliament. It has been given, and has steadily taken, an increasingly prominent place in the constitutional scene. That prominence is marked in many ways. The general attitude of the Court of Appeal in *Harper* v. *Home Secretary*[55] is in marked contrast to the older privilege cases,[56] or to more recent cases on the effect of "laying" in relation to delegated legislation.[57] It may

[53] Special Report from the Select Committee on Nationalised Industries, 1959, H.C. 276, Q. 263. When the suggestion was made that the real innovation was the injection of this business into the House, he added (Q. 264) "I think you are treading upon new ground, and as Leader of the House I do not want to let our old traditions go too easily."

[54] The last Report from the Select Committee on Procedure, 1959, H.C. 92, and its reception (617 H.C.Deb. 33–186) are similarly marked by the same attitude, and many other instances could be found.

[55] [1955] Ch. 238.

[56] Holt C.J. would, it seems likely, have held that the interpretation of the Schedule of the House of Commons (Redistribution of Seats) Act, 1949, was as much a matter for the courts as the interpretion of borough charters in *Ashby* v. *White* (1703) 2 Ld.Raym. 938. Compare [1955] Ch. at p. 251.

[57] *Bell* v. *Secretary of State for Scotland*, 1933 S.L.T. 518; *R.* v. *Electricity Commissioners* [1924] 1 K.B. 171.

be that the courts on occasion, but not uniformly, give unrealistic weight to formulae which apparently reserve a final decision to Parliament, even though it is known that in the overwhelming majority of cases that decision is a formality.[58] Such formulae do, however, cause difficulty. Either they are treated as meaningless, or they are taken at their face (and misleading) value. Their existence is due both to this reluctance to alter parliamentary forms and to the growing reluctance to allow power to exist or to be controlled elsewhere than in Parliament. While it is true that respect for Parliament tends to make parliamentary institutions rigid, it also tends, both in parliamentary and other minds to a weakening of other institutions in favour of, or in deference to, Parliament, and to Parliament in a particular way. Legislative experiment comes to be looked upon as the business of Government and of Parliament in its political capacity. Thus, bold experimentation, or merely experimentation, in private legislation is looked at askance.[59] Again this attitude is reflected in, or aided by, the attitude of the courts.[60] Even when it is found that, for perfectly sound reasons, effective decision has been removed from Parliament, protests are heard.[61] The list of illustrations of this concentration upon or in Parliament could grow long—recent privilege cases, the arguments about the " Fourteen-day rule," and others spring to mind. All this may be in part an overflow from the conception of the legislative supremacy of Parliament. The idea (true or false) that Parliament can legislate on anything gets translated into an idea that Parliament must therefore do everything, and do it in the ordinary " political " way. Other of our related constitutional ideas assist this trend; added force being given to them because of their merits in other ways. Ministerial responsibility is one such idea.[62] Having discovered a

58 Compare *Some Problems of the Constitution* by G. Marshall and G. C. Moodie, pp. 93 *et seq.*, and Lord Cooper's article " Administrative Justice " in 32 *Public Administration*, 165. In this context the difficulty is made obvious by *R.* v. *Dorset Sessions Appeal Committee, Ex p. Weymouth Corporation* [1960] 2 All E.R. 470. Whatever Parliament " means " by the phrase " person aggrieved " it is probably not what the courts say it means. Of this the courts are aware, but the past sits too heavily upon them.

59 See the Report of the Joint Committee on the Promotion of Private Bills, 1959, H.C., p. 262, particularly s. 34, and consider the preliminary parliamentary history of the Public Vehicles (Travel Concession) Act, 1955; see 537 H.C.D. 757 and the evidence given before the Joint Committee on Private Bill Procedure 1954–55. H.C.P. 139.

60 *Prescott* v. *Birmingham Corporation* [1955] Ch. 210. The provisions there in question do not differ greatly from such sections as the Bristol Corporation Act, 1950, s. 52, dealing with social rehabilitation. In the light of the general social legislation the arguments successfully adduced against the Birmingham Corporation Bill, 1954, would equally strike at such provisions.

61 545 H.C.Deb. col. 41 *et seq.*

62 See, *e.g.*, Debate on the Report of the Franks Committee. 206 H.L.Deb., col. 579. If alternative arrangements do exist there is great pressure to force them into the normal pattern; see the debate on the *Radcliffe Report* 614 H.C.Deb. col. 574 *et seq.* It is certain that such institutions as the University Grants Committee could

remedy or remedial institution which works we tend, out of respect for what it has done in the past, to make it universal.

The consequences of this attitude affect detailed rules. Provided that a parliamentary safeguard has been produced or that Parliament has been satisfied we assume that nothing more is required. The satisfaction of Parliament about the disclosure of documents, or about wire-tapping [63] is taken to be the end of the matter, or indeed as the authorisation of particular procedures even though their legal standing should remain (as in the second instance) questionable. Such matters could be important, but perhaps even more important is the resulting imbalance in constitutional machinery. That imbalance means, on the one side, that other devices cannot really develop. So long as the concern is with the parliamentary control (in traditional ways) of nationalised industries there is little hope of consumer councils, consultative committees and the like growing into effective devices.[64] If they so grow it could only be at the expense of what Parliament would regard as its proper sphere of activity. So instead of trying to foster innovations the attempt is made to stick as closely as possible to tradition. Equally there is as a result, on the other side, a steady, indeed an almost inescapable, pressure to centralisation. All must report to Parliament, the Parliamentary Commissioner must, it is suggested, there report in the hope no doubt that there all remedies will be found. Yet the cries of pressure on parliamentary time will be raised in the next breath, even if in what may be a different context.

The doctrine of the sovereignty of Parliament covers in its effects much more than the legislative field. The doctrine was, however, one steadily developed, to meet circumstances in Parliament and in the country which were changing partly, but not entirely, as a result of the processes starting with the Reform Act of 1832. It was a doctrine suited to particular conditions. It does not follow that it is suited to all conditions. Nor is it a doctrine so ancient or sacred that it should be regarded as beyond examination in the light of its expanding practical consequences. Until both the dogma of parliamentary control and the dogma of control by the ordinary courts are looked upon

not now be created, and may look forward to an uneasy future since they are aberrations from the accepted standard.

63 197 H.L.Deb. cols. 741–748; 575 H.C.Deb. cols. 398–399.

64 The history of the Council for Wales and Monmouthshire is here relevant. See particularly Cmnd. 631 and Cmnd. 334 and 613 H.C.Deb. col. 196. The difficulties which arose were inevitable, granted the present attitude, so too was the attitude of the Prime Minister. Whether necessary adherance to a traditional pattern is always desirable, is however arguable in the general context of constitutional development, quite apart from any particular issues which are raised by this episode.

not as sacred and inviolable doctrines but as doctrines or suppositions upon which could be built appropriate machinery for one generation, there is little hope of building machinery suited to the needs of public law in a new and different generation. Just as the detailed rules of public law were flexible at the beginning of the nineteenth century, while courts fumbled for solutions, but have now hardened into principles which are rigidly applied in changed circumstances whether appropriate or not, so the general rules of the constitution and especially those related to Parliament have hardened.[65] Ideas about Parliament in its internal operation have ceased to be flexible, and they are carried into practice whether the results are good or ill, because proper admiration has turned into unreflecting adulation.

A constitution unduly dominated by one institution is unlikely to work satisfactorily, and in moments of stress acknowledgment of and emphasis on this can be found expressed in that other dominant body of a somewhat different type.[66] The major adjustments in law and government which were required to meet the needs of the Industrial Revolution were as much the result of courts as of Parliament.[67] A concentration on one or the other would have been inadequate. Today the revolution has been somewhat different. It has been one in the nature of the state, but that dualism remains important, even though courts in their traditional form cannot play the same part for the reasons which have been suggested. Nevertheless the role of law, and thus of courts, remains important. The theoretical distinction between control of policy and control of legality is not one which can in practice be drawn with any precision. The present obsession with the ordinary courts means that control of legality is confined within the narrowest limits so that it is in truth often merely superficial. Granted this, then the other obsession with a body which, at best, is only fitted to control of policy means that either that body is stretching out to control of legality (as in some of the instances given), for which it is quite unsuited, or that a proper control of legality, in any real sense, in relation to many of the problems to which a modern state gives rise does not exist. There is a need for an effective body which can operate on the disputable border-line of policy and law. That body cannot be an administrative one, since, in modern times, it will merely be forced into the present inadequate pattern. It must then

65 Advocates for further hardening may be found, see, *e.g.*, the insistence on the formulation of a rule to govern all contingencies in *Some Problems of the Constitution* by G. Marshall and G. C. Moodie, Chap. III, p. 61 *et seq.*

66 Such remarks as those of Mr. Justice Stone in *U.S.* v. *Butler*, 297 U.S. 1, 87 (1936) that "Courts are not the only agency of government that must be assumed to have capacity to govern," which can be matched by many similar ones, can be applied to other agencies of government.

67 A matter strongly re-emphasised in *Judge and Jurist in the Reign of Queen Victoria* by C. H. S. Fifoot.

be some form of curial body. Only such a body will have the strength and independence to break the pattern and establish itself, as has the Restrictive Practices Court. It cannot, any more than that court be entirely "ordinary." It must be capable of advancing into the field of administrative morality, and to do that must be composed and operate in ways which may be regarded as novel. They will only be so regarded if one's eyes are focused entirely upon traditional courts, but they need not be so regarded if one enlarges one's vision to embrace both the administrative courts, truly so called, which do exist and the specialties of public law, which equally exist but which are not always recognised because of a like concentration upon a narrow and often irrelevant field of judicial review, dominated in England by the prerogative orders and, by infection, similarly limited elsewhere. The real problems of modern administrative law are not to be found in that field, or, if they are, their solution is not to be there found. The creation of such a body can only come about if flexibility remains a characteristic of our constitution, and if we are prepared to look afresh at Parliament and the courts without making the assumptions that all answers can be found in the one or that the other must have a certain shape and character. Present needs will not be met by creating an odd Parliamentary Commissioner here, or an odd Council there. What is needed is a genuine place for administrative law and administrative lawyers. By creating a proper forum and conditions for their work the imbalance in the Constitution can be arrested and the real problems be attacked. Thus experiment upon the lines of new courts appears to be the most hopeful way of helping both law and the shape of the governmental machine. Proper balance and flexibility go hand in hand in the physical and constitutional worlds. Traditional institutions deserve respect, but they will only be rightly regarded if it is remembered that the men who made them were creators even when they posed as *laudatores temporis acti*. Nor were they ever inhibited by their pose from experiment to secure necessary adjustments of constitutional machinery to meet changing needs. The pose may have become an unfortunate reality in their successors.

THE COUNCIL ON TRIBUNALS

H. W. R. WADE

THE Council on Tribunals [1] has now been at work for nearly two years, and has published its first annual report. Although these are early days for any serious attempt to assess its value and its potentialities, it may be seasonable to discuss shortly some of the activities described in the Report, to touch on the topical question how far the Council's work can be compared with that of the Scandinavian Ombudsman, and to see how far the Council is fulfilling the design of the Franks Committee's Report of 1957.[2] One would also like to be able to look into the future, however uncertainly, and ask how far the Council's existence will be relevant to the live issues in administrative law during the next few years.

Although the Council's field of operations is limited to tribunals and inquiries, these twin subjects comprise between them a very extensive part of the machinery of administrative justice. The Council is the first permanent and independent body to be charged with tending that machinery and ensuring that it gives satisfaction to the public as well as to the Government. This is a new constitutional function, of a modest kind, and it is possible that it indicates a turning-point. With its limited scope and its lack of legal powers the Council certainly falls far short of the Councils of State which other countries employ. Nevertheless the object of the experiment is broadly similar: it is an attempt to solve some of the more immediate problems of tempering power with justice. Lawyers try to make their contribution by insisting on the importance of impartial decision and fair procedure, hoping to infuse these ideals into administrative activity so far as its nature will admit them—and its nature will often admit them further than is supposed. The Council on Tribunals is concerned with them in the quarter of the field where they have already penetrated farthest, that is to say where special tribunals have been set up by statute, or

* The author is Reader in English Law, University of Cambridge.

1 The Council was constituted under the Tribunals and Inquiries Act, 1958, which gave effect to recommendations of the Franks Committee. Its primary task is to keep under review the tribunals specified in the Act (and any new ones added under s. 10), to report on any matters referred to it concerning any tribunals, and to report on administrative procedures involving statutory inquiries where some matter is either referred to the Council or is determined by the Council to be of special importance (s. 1). For the Council's membership see 596 H.C. Deb. 156; 212 H.L. Deb. 1068; [1959] P.L. 81.

2 (1957) Cmnd. 218.

where there is a statutory right to an inquiry prior to some ministerial decision. The Council's object is not to conquer new territory, but to promote peace, order and good government in the territory already won.

The Background

This is not the occasion for a survey of the Franks Report of 1957 and the Tribunals and Inquiries Act, 1958. Commentaries on these have already been published,[3] and in any case they can well speak for themselves. It must suffice to recall that the Franks Committee, after thoroughly investigating the complex system of statutory tribunals and inquiries, made a large number of recommendations for rationalising their organisation and improving their procedure. The problem in a nutshell was that in statute after statute (and especially in connection with new social services) Parliament had constituted special tribunals for deciding disputes until they had become almost innumerable. The tribunals mentioned in the First Schedule to the Tribunals and Inquiries Act, 1958, which the Council now has to supervise, number over 2,000. But, as each successive statute improvised its own system to suit its own requirements, there was a strong tendency to diversity. It came to be realised that Parliament had created an enormous new system of judicature piecemeal, and that a stocktaking was overdue. This was the Franks Committee's task, as regards tribunals. As regards inquiries, the Committee had to renew the attack on the older and more familiar problem of reconciling judicial procedure with administrative necessity in the statutory inquiries which are so commonly held in order to hear objections to such things as planning schemes and clearance orders. The chief results in this field were that the long-fought battle for the publication of inspectors' reports was at last won, and that it was at last admitted that objectors had a right to know the case against them at the inquiry.

The fundamental difference between tribunals and inquiries ought perhaps to be pointed out once again, since it is often overlooked in comparisons, and particularly in comparisons of English and American procedures. Tribunals are concerned with objective decisions, reached by applying rules to facts, rather than with decisions of policy. The fact that there are a few exceptions (such as the tribunals dealing with transport licensing and rate-fixing) does not matter. The great majority of tribunals, of which typical examples are National Insurance Local Tribunals, Rent Tribunals and Agricultural Land Tribunals, have to decide individual cases on their merits according

[3] On the Report see 73 L.Q.R. 470 (Prof. E. C. S. Wade); [1958] P.L. 12 (Prof. W. A. Robson); 22 M.L.R. 125 (Prof. J. A. G. Griffith), also dealing with the Act. On the Act see [1958] P.L. 407; [1958] C.L.J. 129.

to statutory rules and regulations. In other words, they take judicial decisions, and their work is similar to that of courts of law. What is needed is a tribunal which can dispose of numerous small cases with less formality and greater speed than a court of law, and which will relieve the Ministry of responsibility. Often the tribunal will have a wide discretion, as a court of law must often have, but all the same its decision is objective. The tribunal system, therefore, is a supplementary legal system which should work well enough provided only that it is properly organised. It is clear that this system is in general sound. But it is equally clear that without supervision it can run riot. Tribunals have for some time been the Cinderellas of the judicial world. In one sense they are part of the machinery of administration, being designed to play their special part in the administration of statutory services or controls. But their parent departments have hitherto left them very much to their own devices, for the excellent reason (among others) that government departments ought not to interfere with judicial functions. The tribunals tended to be nobody's children, and the numerous oddities and inconsistencies which the Franks Committee brought to light were the natural symptoms of a prolonged period of experimental independence. The varying practices as to the giving of reasons for decisions, as to admitting the public, and as to allowing or not allowing legal representation [4] illustrate the way in which different habits could develop in different tribunals when there was, in the aggregate, plenty of experience on which to found general principles of tribunal procedure which could be adopted uniformly. The Franks Committee did invaluable work in collecting this experience and in laying the foundations of a more uniform and satisfactory practice. It recommended the establishment of the Council on Tribunals in order to provide for continuous future supervision, so that the work of discovering the best practices, and applying them more uniformly, should not stop when the Committee dissolved. As regards tribunals, therefore, the Council has been put in charge of one particular department of the machinery of justice. The ordinary courts of law are a much-reformed part of our legal system. The tribunals, standing so much closer to the executive power, and having developed at a speed that the ordinary courts of law have never rivalled, represent a special problem, and are therefore the concern of a special body.

The case with inquiries is altogether different. Here we have decisions of policy, where the responsibility must be borne by a Minister responsible to Parliament. There can be no pretence of merely deciding an individual case according to the rules and regulations.

[4] See the Franks Committee's Report, paras. 161, 173–175, for example.

Some act of discretionary power is proposed by the authorities—usually affecting somebody's land, such as a planning scheme, refusal of planning permission or a compulsory purchase order—and someone (usually the landowner) is objecting. Then the inquiry is held, in order that the objections may be fully heard before the ministry decides whether to override them or not. The analogy with a court of law is only superficial. The outward trappings are there, such as the right to be represented by counsel, and to call and cross-examine witnesses. But this does not lead up to an objective decision: it leads to an act of policy, decided on grounds of expediency. The problem here, therefore, is a formalised version of the acutest problem of administrative justice: how far can the judicial analogy be pushed when we are faced with genuine administrative power? To this general question the Franks Committee was able to give a more positive answer than to many of the more detailed questions of tribunal procedure. Its legacy of work to the Council on Tribunals is therefore correspondingly less. The Council will have to see that the Committee's recommendations, as accepted by the government, are duly carried out, and in particular it will have to approve the statutory code of inquiry procedure which is to be made under the Town and Country Planning Act, 1959.[5] There are some important issues which may not yet have been finally settled—for instance whether the inspectors who hold inquiries should be appointed by the Lord Chancellor rather than by the ministry taking the decision (the government having here differed from the Committee's recommendation), or even whether inspectors could be made independent persons, as is already sometimes the practice in England and usually the practice in Scotland.[6] But these public inquiries, which have become such a familiar feature of our machinery of government, already represent the most highly judicialised part of the administrative process, and it seems unlikely that much further progress can be made. That is one reason why the Council's First Report is concerned wholly with tribunals and not at all with inquiries.

The Council was set up under the Tribunals and Inquiries Act, 1958. Its justification for existence, and also its membership, were sceptically discussed by the learned Editor of this periodical in an article in a sister journal,[7] and perhaps some brief reply should be made to the good-humoured ridicule which he there threw on the whole subject. He represented the campaign for administrative justice on these particular fronts as a phoney war, in which neither side normally took the other seriously except when some random event such as

[5] s. 33; also s. 33 of the Town and Country Planning (Scotland) Act, 1959.
[6] See the Franks Committee's Report, para. 291.
[7] 22 M.L.R. 125.

the Crichel Down affair touched off a bout of hostilities. He suggested that the tribunals had been made undeserving scapegoats for the administrative failures revealed by the Crichel Down inquiry,[8] and that public attention had been artfully deflected from the real problem of administrative standards in the civil service and focused instead on the quite minor problems of tribunals and inquiries. He made sport with what he thought were portentous platitudes in the Franks Report, implied that the Council on Tribunals would be unwieldy and ineffective, and generally posed the question, "what is all the fuss about?"

It was, of course, plain from the first that there was no logical connection between the task undertaken by the Franks Committee and the Crichel Down upheaval which was the historical cause of the Committee's existence. Crichel Down was a case of ordinary administration—or, perhaps one should say, extraordinary maladministration—in a field where the process of administration was not in any way judicialised. Tribunals and inquiries, on the other hand, are the most highly judicialised departments of the administrative system, dealing with disputes over law and over policy respectively. If everything had been done by the light of pure reason, it was the unjudicialised rather than the judicialised machinery which ought to have been investigated. But that, for our present purpose, is a mere matter of aetiology. It does not in the least follow that the Franks Committee's work was misdirected. Indeed, the very fact that tribunals and inquiries so promptly suggested themselves helps to indicate the contrary. Public inquiries were becoming more and more common, especially in connection with the comprehensive postwar planning controls, and they were a subject of continuous (if not always intelligent) complaint, especially as regards non-disclosure of inspectors' reports. Tribunals were working well on the whole, but again there was an undercurrent of grumbling, particularly about rent tribunals, which had been hastily set up under the Furnished Houses (Rent Control) Act, 1946.[9] The fact was also forcing itself into notice that the tribunal system would get out of hand unless something was done to review the medley of experiments in which Parliament had indulged, to establish general principles of procedure, to enforce certain other principles such as the giving of reasons for decisions, and to set up some central organisation for supervision and control. Perhaps these were not very exciting undertakings. But the need for them is self-evident from the evidence given to the Committee, the Committee's Report, and the chorus of welcome with which the Tribunals and Inquiries Act, 1958, was

8 (1954) Cmd. 9176.

9 s. 1 and sched. The regulations for rent tribunals made under s. 8 are not even required to be laid before Parliament.

greeted on both sides of both Houses of Parliament. One must close one's eyes to a great deal of evidence to say that there was nothing here that needed doing.

Then there is always the more general aspect. The question always is, how far is it right to try to judicialise the business of administration. Tribunals and inquiries are the principal experiments in this direction. In the last fifty years their field of operation has been vastly extended. It is most important that they should work well, and be kept under review. It is idle to expect that lawyers' conceptions of fair procedure, natural justice and so forth, will be adopted in other departments if they do not give a good account of themselves in the departments where they should be most at home. In addition, the process of reform has produced a permanent institution for the improvement of the more judicial techniques of administration. This may prove to have been the first milestone on a new road. It is easy to disparage small beginnings. But, at any rate, the campaign for justice in administration is not a phoney war: it is one of the big issues of our time.

The Work of the Council on Tribunals

Until recently the Council has been one short of its statutory maximum of fifteen members. But now, by the death of Lord Reading, it has lost its chairman. The chairmanship is much the most onerous position on the Council, since the chairman has to give most of his time to its work. Lord Reading nursed this new-born body through its first year and a half of life with great care and skill, and his death at this stage was most untimely. The Council has its permanent secretariat in London. The full Council meets usually once a month. For Scottish business it has a Scottish Committee which meets independently in Scotland and which contains four members in addition to the Scottish members of the Council, through whom liaison with the Scottish Committee is maintained. As the Franks Committee recommended,[10] only a minority of the members of the Council are lawyers: there have been three barristers (now reduced to two by the death of the Chairman), one solicitor, and one Writer to the Signet. The experience of the other members covers a wide area of public life and public service. Conspicuous by their absence, however, are members of the House of Commons, who are disqualified by statute.[11]

The Council began work in January 1959, and its first Report (submitted to Ministers in February 1960 and presented to Parliament

10 Report, para. 134
11 Tribunals and Inquiries Act, 1958, s. 1 (8).

in April [12]) covers the first calendar year of its operations. There is no need to repeat what can be read in the Report, but a shorter general account of some of the Council's work may be of interest.

A programme of visits was plainly one of the first necessities, and members have visited as wide a variety of tribunals as possible. This was for the purpose of educating themselves rather than criticising the tribunals, and on the whole it has corroborated the Franks Committee's picture of the tribunals as bodies which work well and give satisfaction to those who appear before them. Various points of criticism were, however, reported, and in some cases action has since been taken by the appropriate ministry. A few difficulties have also been met. Members have no statutory right to attend tribunals, although they have a statutory duty to keep their working under review. When tribunals sit in private, therefore (as for example do the Health Service Tribunals), members can attend only with the tribunal's leave; and sometimes rules of procedures are so framed as to exclude everyone but the parties and their advisers. In practice the tribunals have been helpful, and have seemed glad that an interest was being taken in their working and in their problems. A visit has often provided an opportunity for discussing some general question with the chairman and members, and desirable practices such as the giving of reasons can sometimes be encouraged.

The giving of reasons has, of course, now been put on a statutory footing by the Act, which provides that reasons must be given if requested on or before the giving or notification of the decision.[13] One of the Council's first tasks was to consider applications for exemption from this provision, for the Act contains an escape clause by which the Lord Chancellor (or Secretary of State for Scotland) may make exemption orders, after consultation with the Council, on the ground that the giving of reasons is " unnecessary or impracticable." [14] It was encouraging to find that from all the great host of tribunals only three applications for exemption came forward. These were from the Inland Revenue tribunals, the conscientious objectors tribunals and the arbitrators (in Scotland, arbiters) appointed otherwise than by agreement under the Agricultural Holdings Acts. The Inland Revenue tribunals were a special case. One of them is the Board of Referees, which has to determine whether there is a prima facie case for treating a company's undistributed income as the income of its members for surtax purposes.[15] This preliminary decision does not itself determine the company's rights or liabilities, and a full explanatory

12 Published by H.M.S.O., 1960.
13 Tribunals and Inquiries Act, 1958, s. 12.
14 s. 12 (4).
15 Income Tax Act, 1952, s. 251.

procedure is inappropriate. The other case was that of the tribunals from which appeals are made by way of case stated. The point here was that the Tribunals and Inquiries Act, if it was allowed to apply, would cut across the provisions of the Income Tax Act, 1952, which give the right to ask for a case to be stated for the opinion of the High Court, subject to payment of a fee of one pound.[16] A case stated naturally includes reasons, but since the Income Tax Act already provides its own procedure for obtaining them, the application of the Tribunals and Inquiries Act can be said to be " unnecessary " though not perhaps " impracticable." Its only effect would be to provide a duplicate procedure and save the taxpayer a pound. For these various reasons the Council recommended that the revenue tribunals should be exempted, and an order was made accordingly.[17] This was the only exemption order made, and it will be evident that it involved no weakening of the principle that reasons ought always to be obtainable in suitable cases. The statutory right to demand reasons should lead tribunals into the habit of giving reasons spontaneously, as many of them already do.

The other two cases—conscientious objectors tribunals and agricultural arbitrators—raised different questions. The objection to giving reasons was a general one: that the decision was merely the tribunal's opinion on the whole case, often depending purely on questions of fact. Reasons are not normally given for decisions of fact—no one, for instance, expects them to be given by judges or juries who " find the following facts." Whether a conscientious objector is really sincere, or what is the proper rent for a farm, are questions to which the answers may be merely " We do not accept your case " or " my estimate of the value is so-and-so." All the same, this is one of the inherent difficulties in the giving of reasons at all, and it is by no means confined to the two classes of tribunals which applied for exemption. It is wrong to suppose that the obligation to give reasons means that more reasons must be given than the nature of the case admits. Sometimes the only possible reason will be " We do not accept your evidence " or " In my opinion the value you put forward is too low." Yet these themselves are reasons, and it seems wrong to grant exemption merely because in some cases the reasons will have to be brief or uninformative. The duty to formulate reasons is always likely to have a healthy effect on the quality of decisions, and the right to reasons ought never to be whittled down. The Council accordingly recommended no exemptions in these cases, and none were granted.

[16] s. 64.
[17] S.I. 1959, No 452.

This should not, of course, mean that tribunals can give their reasons in an unhelpful form in cases where it is possible to be explanatory. This issue has been raised in the Divisional Court, though it is not possible to comment on the case since no full report is available, pending a possible appeal.[17a] The Divisional Court refused leave to move for a mandamus to compel a Conscientious Objectors Appellate Tribunal to furnish reasons under the Tribunals and Inquiries Act. The Tribunal's decision had been as follows: "The Local Tribunal decided that appellant had not established a conscientious objection to military service. The Appellate Tribunal think they were right in reaching that decision, and the appeal is therefore dismissed."

Draft procedural rules for tribunals have provided the Council with a steady diet. In the year covered by the Report fifteen sets of rules were submitted under the Act, which requires the Council to be consulted before procedural rules are made.[18] There is a steady flow of new rules, both because new tribunals are frequently being constituted (an important case since the Report is that of the new mental health review tribunals [19]), and also because old rules are from time to time revised. The Council thus has frequent opportunities to see that the tribunals' codes of procedure are satisfactory, and that they conform to Franks Committee principles. The departmental style of drafting tends to produce detailed and intricate rules, and some of the drafts have been daunting even for lawyers to study. Suggestions for clarification have therefore been made as well as suggestions on substantial points such as the giving of reasons and the admission of the public. Details can be seen in the Report. It may be observed that amendments proposed by the Council were accepted in seven out of the fifteen cases, and that one other case is still under discussion. Since the Report was published the draft rules for Mental Health Review Tribunals have been amended in a number of ways at the Council's instance.[20] It is due to the departments to add that they have been most co-operative in accepting suggestions. Though it will no doubt take a long time before any general simplification of tribunals' rules can be achieved, the work of supervising them has begun under favourable auspices.

The method of inquiry has always been to hear evidence from the department and from any other institutions or persons specially concerned, so that a good deal of the Council's time at its meetings has been taken up with hearing and examining witnesses. This is a most

17a *Ex p. Woodhouse* [1960] 6 C.L. 335; *The Times*, June 18, 1960.
18 s. 8.
19 Mental Health Act, 1959, s. 3.
20 For the Rules, see S.I. 1960, No. 1139, to take effect on November 1, 1960.

helpful procedure, but for a body that meets only intermittently it is likely to be time-consuming. Where many interests are involved it may take several months to work through all the evidence, yet there may be an urgent need for a speedy decision, either because some government proposal is hanging fire pending consultation with the Council, or else because some complaint from an individual needs prompt investigation. In the initial period the timetable has worked well; but there is an organisational problem on the horizon.

A question of more immediate difficulty is how the Council is to be consulted before legislation proposing new tribunals is submitted to Parliament. The Franks Committee recommended that "any proposal to establish a new tribunal should be referred to the Council for their advice before steps are taken to establish the tribunal." [21] New tribunals are still cropping up like asparagus in May. Since the Council started work four new varieties have already appeared: the National Insurance Adjudicator,[22] the Mental Health Review Tribunals,[23] the Air Transport Licensing Board [24] and the tribunals proposed by the Chancellor of the Exchequer to deal with tax avoidance.[25] All four of these have now been added to the Council's area of responsibility, under various statutory instruments.[26] But how ought the Council to be consulted before such new tribunals are created? If there is no consultation before the proposed legislation is published, the government will already have made up its mind on everything except minor details, and consultation will lose much of its point. On the other hand the Council is not a government department, and it can hardly expect to play much of a part in the ante-natal stages of legislation. The Lord Chancellor has considered this problem and has indicated that it is intended to consult at the ante-natal stage in normal cases, subject to the exigencies of (a) time and (b) secrecy.[27] It remains to be seen whether the exceptions will be more in evidence than the rule. The Air Transport Licensing Bill was submitted in time for one amendment to be secured so as to guarantee the right to a hearing to operators threatened with loss of livelihood by cancellation of their licences.

There is no need to discuss all the miscellaneous other business mentioned in the Report. It will be seen that there are many matters concerning the constitution of tribunals which have been taken into

21 Report, para. 133.
22 National Insurance Act, 1959, s. 13.
23 Mental Health Act, 1959, s. 3.
24 Civil Aviation (Licensing) Act, 1960, s. 1.
25 Finance Act, 1960, s. 28 (7).
26 By S.I. 1959 No. 1267, and S.I. 1960 Nos. 810, 1335 and 1668 respectively.
27 See the Council's First Report, para. 124.

consideration, such as the qualifications and (not least) the remuneration of chairman and members, the retiring age, and the conditions of service of clerks, particularly clerks of rent tribunals. Tribunal premises have also come in for attention, and some improvements have been secured—though it may well be that tribunals generally are fortunate compared with courts of law, many of which are lamentably short of space and facilities in comparison with other services on which taxpayers' money is more freely spent.

The Council has as yet had little to do with its other principal responsibility, public inquiries. The reasons for this are twofold. First, the Council is waiting to receive the draft rules of procedure for inquiries which the government propose to make under the general power conferred by the Town and Country Planning Act, 1959, which has added a new section to the Tribunals and Inquiries Act, 1958.[28] Secondly, the government have given effect to many of the Franks Committee's recommendations, so that the complaints which used to be heard are heard no longer. Most of the points at issue were of a general kind, and most of them have been covered by new instructions issued by the departments. Since there is, as yet, no statutory code of procedure for inquiries, it has been easy to make changes by administrative directions, usually in the form of circulars.[29] Local authorities have been instructed to make available, in good time before the inquiry, written statements giving full particulars of their case for their proposals; to explain similarly their motives for compulsory acquisition of land; to give full reasons when refusing applications; to explain their proposals fully at any inquiry and to support them by oral evidence; to arrange for witnesses from any other government departments which have views on the matter to attend the inquiry; and in general to take pains to observe the spirit of the Franks Committee's recommendations by showing consideration to appellants and objectors. At the same time the ministries have explained that they will in future give reasoned decisions, and will make available the reports of inspectors holding inquiries.

The publication of reports has always been the central subject of controversy. The arguments advanced by the "administrative" and the "judicial" parties for their rival views were found to be well balanced by the Ministers' Powers Committee of 1932[30]; and publication was as a general rule refused by government departments until the Franks Committee rejected the official view that administrative practice, with its built-in bias towards secrecy, should take the benefit of the doubt. The benefit of the doubt is now given to the overriding

[28] See note 5, above.
[29] For examples see [1958] P.L. 186, 294, 295.
[30] (1932) Cmd. 4060, pp. 100–107.

demands of fair procedure. Since one of the numerous arguments against publication was that it would embarrass inspectors [31] (it was even suggested that they would worry over their grammar and spelling [32]), it is worth quoting the subsequent conclusions of the Chief Housing and Planning Inspector of the Ministry of Housing and Local Government, who wrote in a recent article [33] :

> " As everybody knows, copies of the Inspector's report can be obtained by the parties concerned. There is no doubt that this has been widely welcomed but it is not easy to judge whether it has proved more welcome to the public than the practice whereby the Minister in cases where he differs from the Inspector's recommendation now gives his reasons for doing so, in his decision letter. These new procedures are amongst the most important of the innovations resulting from the Government's acceptance of the Franks Committee recommendations. The Inspector is the Minister's representative with whom the appellant has had personal contact and it is difficult to over-estimate the satisfaction which it gives an appellant to know just what the Inspector thought of the case, what he reported to the Minister and what led the Minister to take a different view in that minority of cases in which he does so. Openness, fairness and impartiality are not new to planning authorities or to Inspectors but it is true to say that the emphasis given by the Franks Committee to this aspect of governmental work has had a markedly beneficial effect on public relations."

One could hardly wish for a better testimonial to the efforts of those who have persisted over many years in advocating the publication of reports and reasons. The beneficial effect on public relations is an important gain from the point of view of the Ministry and the public service generally. Once again, a reform which has long been officially resisted turns out to be one which benefits its own opponents as much as anyone else. In the past there has been constant grumbling by the public about inquiries. Praise has always been given to the skill, patience and courtesy of inspectors, but there was discontent when the openness, fairness and impartiality of the inquiry were succeeded by an administrative stage in which these ideals seemed to be put into reverse. Most people would agree—and the Ministers' Powers Committee were certainly convinced [34]—that the departmental

31 Evidence before Committee on Tribunals and Enquiries, Day 3, p. 85, paras. 721, 723.
32 *Ibid.* Day 13, p. 476, para. 2825.
33 *Journal of the Town Planning Institute,* March 1960, p. 86 at p. 89 (Mr. S. L. G. Beaufoy).
34 See note 30, above.

objections to disclosure were entitled to respect. It was not a one-sided argument, and the official case was a good deal better than some of the reasons put forward in support of it. On the one hand, the Ministry of Education, the Ministry of Transport and the Scottish departments had for some years made it their practice to disclose reports (as well as to employ independent inspectors) and no injury to the public interest could be detected. The Franks Committee's recommendations reflected accurately the growing opinion that non-disclosure was inconsistent with the open and fair procedure which so many statutes sought to provide by giving the right to an inquiry. In the *Arlidge* case of 1914 the House of Lords had decided that such statutes implied no right to disclosure,[35] thus giving the law a bias towards the " administrative " view of these procedures which exactly suited the ideas of most government departments. But a majority of the Court of Appeal (Vaughan Williams and Buckley L.JJ.) had held that non-disclosure was inconsistent with natural justice, and that no statute should be interpreted inconsistently with natural justice unless its provisions were mandatory.[36] The same belief has animated public opinion ever since, and now the government, accepting the Franks Committee's view, has seized the opportunity which the House of Lords missed forty years earlier. At the moment the right to disclosure rests merely on an administrative footing, under various departmental circulars giving effect to Franks Committee recommendations. But it may be that the new practice will shortly be given legal backing in the proposed code of procedure for inquiries. During the parliamentary debates on the Tribunals and Inquiries Bill several speakers said that legal right was better than administrative practice, however enlightened. At any rate, it is heartening to find the new policy so warmly spoken of by the Chief Inspector, in contrast to the dire predictions which came from some official quarters.

Nothing has been done, on the other hand, on the difficult question of " independent " inspectors. The Franks Committee wanted them to be placed under the control of the Lord Chancellor so as to give them greater detachment (or, what is also important, appearance of detachment) from the " appropriate " department.[37] One school of thought is that the appropriate department is for that very reason the inappropriate department to appoint and employ the inspectors. This view can be supported not only by general arguments about the need to avoid bias, or the appearance of bias, but also by pointing to the successful way in which, as already mentioned, Scottish and some English departments have made use of independent professional men

35 *Local Government Board* v. *Arlidge* [1915] A.C. 120.
36 [1914] 1 K.B. 160
37 Report, para. 303.

to conduct their inquiries. On the other side there are compelling administrative reasons which apply principally to inquiries conducted by the Ministry of Housing and Local Government, which in addition to all its own planning inquiries also acts for certain other departments. With over 100 inspectors dealing with over 6,000 inquiries a year, it was understandably felt that the Ministry could not relax its hold on this large and complex organisation. Occasionally the Ministry has employed independent inspectors in cases of special importance, for example the inquiry into development at Lymm (Manchester) in 1958. It is also proposed to deal similarly with the Oxford Relief Road inquiry. Furthermore, it seems likely that proposals to establish new towns, where the Minister himself is the originating authority, will in future go before independent inspectors, in accordance with a guarded personal opinion expressed by the Permanent Secretary to the Franks Committee.[37a]

The majority of planning inquiries, of course, are concerned not with the Ministry's decisions but with the decisions of local planning authorities, and that inspectors are by no means always predisposed in the local authority's favour. The Chief Inspector, in his article already quoted, dwells on a number of common failings of local authorities who appear at inquiries, giving examples of the vices of obscurity, inaccuracy, and lax procedure. It is easy to see that the planning authority can make many kinds of mistakes, that the inspectors are familiar with most of them, and that it may well be the planning authority which is more likely to alienate sympathy than the objector. One small but very proper piece of advice is that the authority's representative should not open the proceedings by greeting the inspector as an old friend!

It is at this point, therefore, that the contest between the administrative and judicial attitudes remains undecided. It is interesting to look at the American developments under the Administrative Procedure Act of 1946, under which hearing officers are established as a special corps of civil servants with protected tenure.[38] But it must not be forgotten that the decisions taken after public inquiries in England are in their nature more political and administrative than the decisions of most of the American regulatory agencies. The problem is mitigated in England by the high standard of the inspectors, and by the good opinion they have won from a somewhat grudging public and legal profession. An eminent Q.C. has been heard to say that he would as willingly appear before a planning inspector as before one of Her Majesty's judges. The practical solution may therefore be that

[37a] Minutes of Evidence, Day 5, p. 118.
[38] Federal Administrative Procedure Act, 1946, s. 11.

the public will accept the impartiality of the inspectors as it has learned to accept that of the Special Commissioners of Income Tax. But the principles of natural justice are powerful in the long run, and the Franks Committee has turned the tide in their favour. It is possible that the status of inspectors may yet become an acute problem, and exercise the Council on Tribunals.

Individual Grievances

There is nothing in the constitution or practice of the Council on Tribunals to prevent it from considering complaints from individuals. It seems that this fact needs emphasising. The British public, if one may judge from its press, radio and television, has taken a strong fancy to the Scandinavian office of Ombudsman, particularly as represented by the distinguished holder of that office in Denmark, Professor Hurwitz. Two articles on his office, one of them written by himself, have already appeared in this journal,[39] and on his visits to this country he has been greeted with an enthusiasm seldom shown for foreign functionaries. The British section of the International Commission of Jurists (JUSTICE) has instituted a study of the subject, to find out whether there ought to be a similar institution in this country. Questions have been asked in the House of Commons, and the Prime Minister has replied that he will await the result of the JUSTICE inquiry.[40]

Amid all this excitement little notice has been paid to the fact that Parliament itself passed an Act in 1958 which sets up an institution covering a considerable part of the Ombudsman's ground. Perhaps it is a case of one's neighbour's field looking greener than one's own. Perhaps, on the other hand, it is simply not appreciated that such facilities now exist in England. The Ombudsman's function (taking the Danish office as the model) is to investigate complaints of all kinds against the central government administration, and to report to Parliament. He is a parliamentary commissioner for the investigation of grievances. The published accounts of his work, and in particular his annual reports,[41] show that he has often been able to obtain satisfaction for aggrieved citizens by persuading government departments or agencies to improve their ways, or to relent in some case which they have misjudged. The same accounts also show that many of his cases concern decisions which in this country would be taken by tribunals subject to the Council's supervision. Complaints about tax

39 [1958] P.L. 236 (Prof. Stephan Hurwitz); [1959] P.L 115 (Miss I. M. Pedersen).
40 612 H.C. Deb. 68 (November 5, 1959).
41 Not published in translation. A selection of cases is given in Miss Pedersen's article referred to in note 39.

tribunals, industrial injuries awards, and unemployment insurance benefit, for example, figure prominently. In both countries alike the administration of comprehensive social services is bound to produce many small disputes and grievances. It is not always realised how highly judicialised is British administration in these fields. Disputes are sent to statutory tribunals, and complaints by dissatisfied parties can now be taken to the Council on Tribunals. So far the Council has not had much of this work, but there are already signs that the flow may be beginning. It is, of course, true that the Ombudsman's field is much wider, and that his mode of operation is different. Compared with a full-time Commissioner, a relatively large and mixed body like the Council on Tribunals, which can meet only intermittently, may have difficulty in dealing efficiently with a flow of individual complaints, particularly with some of the rather small beer which the Ombudsman's reports show to form a substantial part of his work. Nevertheless, the Council has already found that individual cases may raise general issues which it wishes to take up vigorously. The important fact is that machinery for dealing with grievances is now in existence. Experience may well show that the machinery can be improved, but so far at least it is proving equal to the demands made upon it. Once it is understood by the public that the Council is receptive to representations by private individuals, its work may develop in the same direction as the Ombudsman's. Should that development prove successful, it may serve as a pattern for some other institution or device for allaying grievances arising out of the ordinary administrative work of government which lie outside the Council's present jurisdiction. Bearing in mind the British predilection for committees, it is always more likely that any " Ombudsman " function in this country would be entrusted to a composite body rather than to one man. But this is not the occasion to go further into this popular realm of speculation. The Danish Ombudsman has expressed the opinion that the Council contains " the germ " of his office (a metaphor intended to be complimentary), and it will be interesting to see whether germination occurs.

THE BIRCH IN THE CUPBOARD

HERBERT STORING and PETER SELF

I

IN return for a guarantee of economic security the representatives of British agriculture accepted on behalf of their industry an obligation to satisfy certain minimum standards of husbandry and estate management.[1] These standards were to be enforced not by indirect economic pressures but by the direct might of the state. Under Part II of the 1947 Agriculture Act all farms and estates were declared liable to periodic inspection, and their occupiers and owners were required to comply respectively with the "rules of good husbandry" and the "rules of good estate management."[2] Where the farmer was also the owner he was obliged to satisfy both sets of standards. If a farmer or owner failed to comply with these standards he could be placed under "supervision" and required to comply with any directions issued to him. If his performance remained unsatisfactory after a period of time, he could be made to vacate his tenancy or quit his holding. An owner was not of course deprived of his property without compensation, being entitled to sell his land or to let it to an approved tenant. But he could be required to farm as others thought best and, failing satisfaction, be made to vacate simultaneously his farm and his home. Many farmers were so treated.[3]

Such powers may seem to reflect a harsh attitude toward individual rights which is inconsistent with Britain's long tradition of freedom. Townsmen in particular are inclined to wonder that they were ever granted. It is therefore well to recall their actual context. First, they were originally war powers, and for a long time at least they appeared equally necessary under peacetime conditions of economic stress. Second, Britain has become increasingly conscious of her small area in relation to all the competing pressures on land. The fear of a "land famine" combined with the much older view of land as a "sacred trust" combined to suggest that the nation could no

* Mr. Storing is Assistant Professor of Political Science in the University of Chicago; Mr. Self is Lecturer in Public Administration in the University of London.

1 This article is part of a larger work, shortly to be published, entitled *The State and The Farmer*, and Mr. Storing contributed the larger share to this section.

2 Agriculture Act, 1947, ss. 10 and 11.

3 The relations between landlords and tenants were governed according to similar principles, but they are not discussed in this article.

longer afford to tolerate idle or ill-farmed acres. Third, most farmers believed that the coupling of sanctions against inefficiency with the guarantee of economic support was reasonable and necessary. Finally, the sanctions were part of a system of "self discipline." Even in wartime there had been no question of entrusting coercive powers to public officials. They were in the hands of farmers and other members of the farming community sitting on the War Agricultural Executive Committees. The "War Ags" were selected by the Minister of Agriculture and acted exclusively as his agents, but care was taken to make their membership tolerably representative. Under the Agriculture Act these Committees were reconstituted, and a majority of their members had to be drawn from lists submitted by the main agricultural organisations.

The new law was based in part on the Committees' war powers to give directions regarding the use of agricultural land and (with the consent of the Minister) to take possession of land or to terminate tenancies. These powers were used mainly in connection with odd pieces of land and occasional intractable individuals, but their presence in the background stiffened the whole programme of informal advice and voluntary compliance. Between 1940 and 1947 there were some 10,000 cases of dispossession, but the great majority involved non-resident owners, parts of holdings, derelict land, etc. During the same period nearly 3,000 tenancies were terminated, but again about half involved only accommodation land.[4]

The main work of the "War Ags" was not the exercise of compulsion but the administration of cropping programmes and the provision of services. National production targets were distributed among the counties, and the Committees then allocated quotas to each district, leaving their local district committees to work out the details with individual farmers. Each member of a district committee was usually responsible for certain farms, and he often gave detailed instructions about their management. During these times of crises his decisions were normally upheld by the Committee and by the Ministry, and indeed they were rarely challenged.[5] That this authority was sometimes exercised with an unnecessarily heavy hand and that there were individual cases of injustice was inevitable, but on balance the work

[4] These war powers were exercised under the Cultivation of Lands Order, 1939, S. R. & O., No. 1078. They continued to be exercised during the hiatus between the end of the war and the enactment of new legislation but at a declining rate. See Keith A. H. Murray, *Agriculture*, pp. 302–303 (London, H.M.S.O., 1955).

[5] Murray points out that it is impossible to ascertain the extent to which compulsion had to be used to implement cropping directions, since formal orders were often issued even where compliance was voluntary in order to make the farmer eligible for certain grants or to protect him from legal action by his landlord. Murray, *Agriculture*, pp. 301–302.

of the " War Ags " was creditably done. There is little exaggeration in the evaluation of the official historian of the wartime agricultural programme:

" It is impossible adequately to describe the devotion behind the long hours spent in visiting farms, field by field, by day and by night, in all seasons of the year; the infinite patience required in cajoling reluctant farmers to change their systems, and, often, in surmounting the suspicions and criticisms with which some farmers greeted the advice of their neighbours; the determination required to overcome the tedium of committee work and the weariness of form-filling and report-writing added to the continuous labour of running their own businesses. The reward to these men, who persisted in their work over so many years, was often only the sense of having fulfilled their duty and the knowledge that the ordinary farmer in the early years of the war would never have accepted directions or advice from anyone who was not himself facing the new problems and who had not himself made a success of farming " [6]

Shortly after the reconstitution of the Committees in 1948 the Minister announced a new production drive. Another farm survey, like that conducted during the war, was initiated which was intended to be the beginning of a continuous programme of three-yearly visits. The farm survey was the basis of the Committees' whole discipline-advice programme. Normally visits were made by two district committee members (accompanied by one or more officials) who walked around the farm, talked with the farmer, and filled in survey forms issued by the Ministry. Based on the broad rules of good husbandry set out in the Agriculture Act, these forms provided for an assessment of such features as suitability of crop rotation, efficiency of grassland management, use of fertilisers, adequacy of machinery and labour force, yields and output. As during wartime, each farm was graded " A " (good), " B " (fair), or " C " (poor). Where a survey revealed poor farming the district committee first attempted to persuade the farmer to improve, and a member living nearby might undertake to give him periodic advice. It was not unusual for committee members to lend machinery or other assistance to a farmer " in trouble." The district advisory officer would be asked to give special attention to this farmer if he was not already doing so. In most cases this was sufficient, though many farmers needed periodic prodding. Where it was not, the district committee reported the case to the County Committee's husbandry sub-committee for further action.

Again the farmer received a series of visits, this time from a panel of the sub-committee. Again he was urged to avail himself of

[6] *Ibid.* p. 339.

the assistance of the advisory officers, and he might be given advice by the panel members themselves. Again he was impressed—and at this stage more strongly—with the fact that drastic action might become necessary. The panel then reported back to the next meeting of the sub-committee where a proposal might be made to put the farmer under supervision. The sub-committee might, however, decide to try more persuasion, postponing its own decision or returning the case to the district committee where the whole process began again. Before a supervision order could be made the farmer had to be notified and given an opportunity to make representations which were heard by the sub-committee.

Supervision orders were reviewed annually. If the farmer showed little or no improvement the sub-committee would usually recommend a second year of supervision, after which dispossession might be proposed. The County Committee normally reviewed these decisions at length, sometimes sending out still another panel to inspect the farm.[7] Committee recommendations for dispossession were examined at the Ministry's provincial headquarters offices, primarily to ensure that all procedural requirements had been fulfilled, which was by no means always the case. Though the final decision to proceed with dispossession was formally the Minister's, the substantive content of a Committee's decision was rarely questioned. This task of defining and applying broad standards of husbandry and estate management was of course neither easy nor popular. A farmer's whole future might hinge on a judgment whether or not he had maintained " a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future." [8] But at least these judgments were made by practical local people who could be expected to appreciate the farmer's problems and to apply their powers with sympathy and moderation.

The continued co-operation of the Committees was vital to the success of the programme, and this introduced an unusual and delicate set of considerations into the questions of administrative reform which inevitably arose with the accumulation of peacetime experience and criticism. The first thoroughgoing examination of the workings of the Committees was made by the Ryan Committee which reported in

[7] In 1955, as a result of a remark by Denning L.J. in the *Graham and Benney* case (see pp. 16–18), Committees were instructed that one body should deal with the case from beginning to end, and most of them delegated the authority to decide all questions relating to sanctions to a single husbandry and estate management sub-committee. By this time sanctions were moribund and the question had no significance.

[8] Agriculture Act, 1947, s. 11 (1).

1951.[9] It suggested that the system of alphabetical grading be abolished on the ground that it conveyed a false impression of objectivity and national uniformity,[10] and that farmers be given more information about the opinions of visiting panels. It recommended dissociating the professional advisory service from the Committees' farm survey and sanctions work. And it recommended that the Committees be denuded of most of their administrative functions. The Ministry accepted most of the Ryan recommendations, but the Committees decidedly did not. As they saw it, they were to be deprived of the administrative work which they rather liked, while at the same time being asked to perform unaided the difficult and often disagreeable task of disciplining their fellow farmers.

When the vehemence of the Committees' opposition was discovered the Ministry had to lay aside its plans for full reform and try to heal a breach with the Committees which threatened the entire local administration. It was doubtless with some relief that the Minister, Mr. Thomas Williams, turned the problem over to his Conservative successor in the autumn of 1951. Williams could, however, look back on a period during which the sanctions had been administered with considerable energy. Between March, 1948, when the Agriculture Act came into force, and the end of 1951 more than 3,000 supervision orders had been issued and 157 farmers and 10 landowners dispossessed.[11]

The Conservative Minister of Agriculture, Sir Thomas Dugdale, was no more ready than Williams had been to antagonise the Committees over the Ryan Report. He gently suggested that they adopt the farm survey procedures recommended by Ryan, but most of them failed to do so. In more and more counties the survey was all but abandoned, but the effects were not immediately felt. Indeed, Dugdale took at first a curiously strong position on sanctions. Committees were told in the customary spring circular in 1952 that they had not been vigorous enough in imposing sanctions during the previous four years, that there had been too few supervision orders and too few dispossessions. In a personal letter to them Dugdale wrote:

> I rely on you, the man on the spot, to persuade the half-hearted farmer to mend his ways, to give your personal advice when and where it can help and to recommend really inefficient farmers for supervision. I know that this is not always a pleasant task, but I

9 Ministry of Agriculture and Fisheries, *Report of the Committee to Review the Organisation of the Ministry of Agriculture and Fisheries* (London: H.M.S.O., 1951).

10 The absence of uniformity was a common ground of criticism during the war. One district committee, for example, graded 98 per cent. of its farmers "A." Murray, *Agriculture*, p. 329.

11 See table at p. 395, below.

am sure you realise that guaranteed prices and assured markets must be matched by good husbandry.[12]

The new Parliamentary Secretary, Lord Carrington, was even more explicit: " There is no room for the inefficient farmer, and the county agricultural executive committees will have to take stern action in future to keep up a higher standard of husbandry." [13]

In 1952 supervision orders (998) and dispossessions (113) reached their highest peacetime figure. To some extent this was the result of a momentum built up over several years; but it was no coincidence that the Dugdale policy was linked with a new (though more modest) drive to increase food production. The keenness and morale of the Committees and their willingness to wield the stick was always most pronounced at such times. This was understandable enough, but the connection naturally militated against the development of a code of good husbandry suitable to normal conditions. The Ryan Committee complained with reason that supervision orders were often directed towards increasing production rather than improving farming standards.[14] This view was given formal endorsement by the Ministry, but in practice the Committees' disciplinary powers were associated with the need for more home produced food. Especially at the political level, " more efficiency " and " more food " were used almost synonymously. Thus when in 1953 the food shortage had been largely overcome, Dugdale's statements on sanctions took on a much different emphasis. He stressed that the purpose of the farm survey was mainly advisory and that sanctions should only be imposed when it was perfectly clear that a farmer would not take advice. This softer line seemed to confirm what many of the Committees had expected all along, that they could not expect any real backing from London in the imposition of sanctions. Their response is indicated by the fact that the number of supervision orders in 1953 dropped to 543, little more than half of the previous year's total.

II

One inevitable but awkward consequence of the 1947 " partnership " was that farmers and landlords affected by sanctions could not count on the unqualified support of their own representative organisations.

[12] *The Farmers Weekly,* June 13, 1952, p. 37. This journal criticised Sir Thomas for laying too much emphasis on " the big stick and . . . on threats rather than on positive offers of friendly help." August 1, 1952, p. 27.

[13] *Manchester Guardian,* January 14, 1952.

[14] *Report of the Committee to Review the Organisation of the Ministry of Agriculture and Fisheries,* 1951, p. 10. Yet throughout its report the Ryan Committee itself saw sanctions and the production drive as closely intertwined.

One farmer, for example, on being served with a supervision proposal, appealed to the National Farmers' Union, of which he had been a member for fifteen years, "and to his consternation and bewilderment discovered that the man leading the attack for the Agricultural Executive Committee was the chairman of the N.F.U. and a magistrate as well. What can he, and does he, now think of the N.F.U.?" [15] Another was advised by his solicitor that "we might as well have put our heads in a lion's mouth as to go to the N.F.U. for help." [16] Even where Farmers' Union-County Committee cliques were avoided (and they were not always easy to avoid), a farmer threatened with sanctions knew that his Union's support would be qualified by the 1947 agreement. Both the farmers' and the landowners' organisations ordinarily limited their assistance to a member threatened with sanctions to what could be given "across the table": a full explanation of his rights and the correct procedure, a frank appraisal of the merits of his case, and broad advice on how to proceed.[17] Some Farmers' Union branches went so far as to give active support in what they considered to be especially deserving cases, sometimes sending out inspecting panels of their own. To try to avoid giving the impression of condemning those farmers who did not get such support, it was the practice of local Union leaders to speak ostensibly as private individuals.[18]

Partly because the major organisations could not take the view, "our members, right or wrong," there grew up an organisation which was not a participant in the 1947 agreement. The Farmers and Smallholders Association, like its partner, the Cheap Food League, opposed the whole conception of state subsidies and controls. Just because its main concern was with general principles, the Association would support almost any farmer in trouble. If he was plainly a poor farmer some other defence was found—that he was an ex-serviceman, that his family had been on the farm for generations, that he was being turned out of his home, that he was a lover of liberty. The Association not only made full use of the procedural protections for individuals but it organised petitions, got letters sent to Ministers and questions put in Parliament, and publicised individual cases of alleged

15 Letter to *The Farmers Weekly*, July 11, 1952, p. 28. See also June 6, 1952, p. 28. For earlier criticism of this kind see *Living Casualties* (Church Stretton, Salop: The Farmers' Rights Association, n.d.); F. D. Smith and Barbara Wilcox, *Farming Is Still a Gamble* (London: People's Universities Press, 1948), pp. 45–46.

16 From the files of the Farmers and Smallholders Association.

17 See *The British Farmer*, Official Journal of the National Farmers' Union, October, 1953, p. 7; *Country Landowner* (Official Journal of the Country Landowners' Association), October 1952, p. 156.

18 See for example, National Farmers' Union Shropshire County Branch, *Forty-Sixth Annual Report for the Year Ended 30th November 1953*, p. 61, where members of the branch parliamentary committee are reported as making representations on a member's behalf "in their capacity as practical men."

stupidity and injustice. Ostensibly the Association aimed at becoming a second general farmers' organisation, but there was never any serious prospect of that. With a membership numbered in the hundreds, it was a head with almost no body; or rather it was a head that might attach itself to one of several bodies according to the needs of the moment—the Farmers and Smallholders Association, the Cheap Food League, the Council for the Reduction of Taxation, the Independent Livestock Producers Association, and others. These phantom organisations provided the several platforms from which a small staff in two or three rooms in Austin Friars directed their propaganda against subsidies and controls. " We don't want too many members," one of them said, " They take up too much time."

The Farmers and Smallholders Association carried on a remarkably tenacious and not unsuccessful harassment of the Ministry of Agriculture and the 1947 Act. The organisation never had any real agricultural roots, but it had in its favour the latent hostility to disciplinary powers, the co-operation of a section of the Press, a friendly Member of Parliament (the late Sir Waldron Smithers), and its own perseverance in seeking out and attaching itself to cases that could be used in its campaign. When finally a Conservative Government repealed the disciplinary provisions of the Agriculture Act its spokesman had to admit that the only agricultural organisation favouring repeal was the Farmers and Smallholders Association.[19]

The Farmers and Smallholders Association was not the only or even the major force which eventually brought down the disciplinary provisions of the Agriculture Act. While Sir Thomas Dugdale and the Conservative Government were trying to pour oil on waters troubled by Ryan, and to decide what to do about sanctions, the Ministry suffered the first of a series of blows which in the end made up their minds for them. The Crichel Down investigation in the summer of 1954 had nothing to do with sanctions; but it revealed serious blunders and inequities in the disposition of land taken over during the war,[20] and sanctions and the Committees were included with the rest of the wartime legacies in an orgy of shocked disapproval. The behaviour of some of the civil servants involved in the Crichel Down case was certainly indefensible. Behind it, however, lay the uncertainty of the Conservative Government about its policy with respect to state agricultural holdings, an uncertainty which extended

[19] *Hansard*, Commons (1957–58), Vol. 579, col. 11. By this time the Farmers and Smallholders Association had lost interest in the Agriculture Act and turned its attention to statutory marketing schemes which provided, from its point of view, a more profitable object of attack.

[20] Ministry of Agriculture and Fisheries, *Public Inquiry Ordered by the Minister of Agriculture into the Disposal of Land at Crichel Down*, Cmd. 9176 (London: H.M.S.O., 1954)

also to the sanctions against inefficiency. As a result of Crichel Down, the Conservatives decided to take the state out of the business of farming as quickly as possible, while sacrificing the amiable Sir Thomas Dugdale according to the customary constitutional rites. The change of Minister was symptomatic. Sir Thomas, a bluff Yorkshire squire, had seemingly been ready to apply the Agriculture Act in much the same spirit as his Labour predecessor, though he revealed some doubts about whether the Labour-manufactured bottle could properly contain the old-style Tory paternalism which he represented so well. His successor, Mr. Heathcoat Amory, had a liberal's scepticism of direct state controls and stronger trust in economic forces.

On the very day that Dugdale announced his resignation a High Court decision cast a further shadow over the disciplinary provisions of the Agriculture Act, though once again those provisions were not directly involved.[21] The Act provided that any farmer or landowner faced with dispossession could appeal to an Agricultural Land Tribunal whose decision was final.[22] These tribunals consist of a permanent legally qualified chairman appointed by the Lord Chancellor sitting with two members appointed (until 1954) by the Minister from panels nominated by the farmers' and landowners' organisations. The Tribunal reheard the whole case, revisiting the farm in question and taking account (if it chose) of improvements effected while the appeal was pending. The Agriculture Act also allowed an appeal in other cases, including those in which the Minister decided to retain land requisitioned during the war in order to secure its more efficient use, and it was under this provision that the *Woollett* case arose.[23]

In 1947 Mrs. Woollett and her husband purchased a small plot of land in Essex, amounting to about four acres, which was at that time being farmed by the Essex War Agricultural Executive Committee. In 1949 the Ministry released part of the land to Mrs. Woollett and indicated that the rest would probably be relinquished the next year. The Woolletts then prepared to work the land as a smallholding, but six months later they received notice that the Minister had changed his mind and proposed to retain it. Mrs. Woollett appealed to an Agricultural Land Tribunal which upheld the Minister, giving no reasons. This decision was challenged in the High Court, principally on the ground that the nominated members had been improperly appointed. The actual selections had been made in a very informal fashion by the secretary of the Tribunal, an officer of the Ministry's Agricultural

21 *Woollett* v. *Minister of Agriculture and Fisheries* [1954] 2 All E.R. 776.
22 Agriculture Act, 1947, ss. 16 (5), 17 (3) and 9th Sched.; Agriculture (Procedure of Agricultural Land Tribunals) Order, 1954, S.I. 1138 (1954). See "Agricultural Land Tribunals," *The British Journal of Administrative Law*, May 1954.
23 Agriculture Act, 1947, s. 85. See ss. 15 (2), 31 (6), and 5th Sched.

Land Service. He had not been explicitly authorised to act for the Minister, nor did he state that he was so authorised. This method of selecting the lay members of the Tribunals had grown up without much thought, and there was considerable confusion, even among those immediately involved, about who was actually responsible.[24]

The Agriculture Act provides that the acts of an Agricultural Land Tribunal shall be valid even where there has been a defect in the appointment of its members and that a compulsory purchase order must be challenged within six weeks of its issuance,[25] which Mrs. Woollett had failed to do. But Stable J. swept these obstacles aside by holding that there had not been a *defect* in appointment, but no appointment at all. Having been no appointment, there was no tribunal; and having been no tribunal, there was no certificate of compulsory purchase. Therefore neither the saving provision nor the time limitation had any application. The ingenious chain of reasoning by which this conclusion was reached is less important than the judge's emphasis on the fact that the Tribunal " is literally the only protection that the subject has against the encroachment of the executive," [26] and his determination to hold it to an even stricter standard of regularity than the Act itself seemed to require.

The Court of Appeal could not accept the judge's legal reasoning, though it did not disagree with his assessment of the merits of the case. Denning L.J. thought that the appointment of the nominated members was a regrettable irregularity but one covered by the saving provisions of the Act.

> It is no doubt hard on Mrs. Woollett to have her little piece of land taken from her. She spent much money in the reasonable expectation that it would be released to her, only to find afterwards that the Minister decided to retain it. But there is nothing that can be done about it. The Minister has certified that it is necessary for him to retain the land and no one can say him nay. In my opinion the appeal should be allowed and judgment entered for the Ministry.[27]

The members of the Court of Appeal did not conceal their opinion that justice was on the side of Mrs. Woollett, though the law was not.

[24] At the Tribunal hearing it had been claimed that since the lay members were appointed by the Minister, the Tribunals were not independent, and the chairman had countered with the assertion that the Minister had nothing to do with it and that the selections were made by himself. [1954] 2 All E.R. 780.

[25] Agriculture Act, 1947, 9th Sched., para. 20 (2); s. 92.

[26] [1954] 2 All E.R. 781.

[27] *Woollett* v. *Minister of Agriculture and Fisheries* [1955] 1 Q.B. 122. Morris L.J. thought that at most there was a defect in the method of making the appointments and that this was covered by the saving clause. Jenkins L.J. thought that, in spite of the lack of formality, the appointments were not defective.

The Minister won the argument over technicalities, but the saving provisions of the Act on which he relied seemed dangerous in their wide scope. Also the case disclosed a lack of care in the constitution of these vital appeals tribunals and of consideration in dealing with private citizens, and the Minister himself lent weight to the widespread feeling that an injustice had been done when he decided in the end to let Mrs. Woollett keep her bit of land.

Part of the damage done to the prestige of the Ministry and the Agricultural Land Tribunals was repaired by amendments to the Agriculture Act passed in 1954 but initiated prior to the first *Woollett* decision.[28] The keeping of the farmer and landowner panels was transferred to the Lord Chancellor and the selection of members for each sitting was vested in the chairman. Although this was applauded as likely to give the Tribunals " a greater weight of independence of mind," [29] it made no real difference. The Tribunals were no less independent under the old system than under the new, and in practice the *ad hoc* members continued to be selected by the Tribunal secretary.

This formal change was not enough for the more vocal critics of the Act. Sir Waldron Smithers told the House of Commons that the 1954 amendments were " only a very small and timid step " in the right direction, and that in establishing the Tribunals Parliament had " put back the clock 300 years." Later he warned that " we shall continue to fight until dispossessed farmers have a right of appeal in open court on the facts and merits of their complaints." [30] Such a desire was never widespread among farmers, and Mr. Anthony Hurd expressed the much more common view when he told the House of Commons:

> If I were a farmer or landowner in trouble, I would ten times rather be judged by my peers who have practical knowledge of the matters at issue than be dragged up to London into the High Court. I would know where I stood because I would be talking the same language as the men who were to pass judgment on me.[31]

The fact is that most of the critics were not primarily interested in reforming the existing system but in discrediting the Tribunals (and through them the Ministry) and in stifling the Agriculture Act by transferring its administration to the courts.

Though neither Crichel Down nor the *Woollett* case concerned

[28] Agriculture (Miscellaneous Provisions) Act, 1954, ss. 4–6, 1st Sched.
[29] *The Economist*, September 4, 1954.
[30] *Hansard*, Commons (1953–54), Vol. 522, cols. 860–861, 1561.
[31] *Ibid.* cols. 873–874. See also cols. 842, 1571.

sanctions, the furore over them influenced the new Minister of Agriculture to attempt to clarify his policy. In the autumn of 1954 Mr. Heathcoat Amory reaffirmed that farmers were under an obligation to make the most efficient use of the land, but he emphasised that sanctions were to be used only as the very last resort. By this time the farm survey was referred to in the past tense. The Committees were advised to ignore small holdings of land altogether and warned to be very sure, before imposing a supervision order, that they would be willing to go ahead with dispossession if there were no improvement.[32]

It proved impossible for the Minister to hold even this limited position, for no sooner had his department won its somewhat less than glorious victory in the *Woollett* case than it was embroiled in further litigation. At each step in the supervision-dispossession procedure the affected farmer or landowner had the right to make representations before a person appointed for that purpose by the Minister. The Minister delegated his power to the Committees, and they ordinarily appointed their husbandry and estate management sub-committees. This practice was challenged by two farmers, Thomas Graham who had been put under supervision, and George Benney who had been ordered to vacate his farm and let it to an approved tenant. Graham and Benney argued that the Agricultural Act contemplated a hearing by some independent person, which the sub-committee dealing with the case clearly was not, and this argument was accepted by the High Court. The Lord Chief Justice purported to rest his opinion " entirely upon a question of construction," but he added that if the sub-committee heard the representations a farmer might reasonably say:

> What is the good of my going before these people who have already decided that they are going to make this dispossession order? If I go before some independent person I may be able to satisfy him that he ought not to make the order and he will tell them so.[33]

Devlin J. agreed and chided the Solicitor-General for his argument that the provision for representations was merely executive machinery, an ear trumpet for whoever was making the decision, " because I

[32] See *The Farmers Weekly*, October 15, 1954, p. 45.

[33] *R.* v. *Minister of Agriculture and Fisheries, ex p. Graham and R.* v. *Agricultural Land Tribunal (South Western Province), ex p. Benney* [1955] 2 Q.B. 150–151. The provision being construed was s. 104 (5) of the 1947 Agriculture Act which reads that " no officer or servant of a county agricultural executive committee, or any sub-committee or district committee thereof shall be appointed . . . to receive representations relating to land in the area of the Committee." The Ministry had interpreted this to mean that no officer of a county committee or *of* a subordinate committee could hear the representations but the Lord Chief Justice read it to mean that neither committee officers nor the subordinate committees themselves could hear them.

think that it shows a failure to appreciate the spirit of the Act as well as the letter of it." Had the judges been free to examine the parliamentary debates, where this point was discussed, they would have discovered that their understanding of parliamentary intent was in error and that the Solicitor-General was correct.[34]

Again the Ministry's interpretation of the provision was upheld on appeal, but at the cost of another tongue-lashing from the court. Indeed although the representations had been properly heard, a technicality was found in the *Benney* case sufficient to upset the Minister's decision. The Tribunal had inadvertently and without authority eliminated four acres of land from the Minister's order. Again it was Denning L.J. who best expressed the judicial attitude. Speaking of Mr. Benney he said:

> He is the owner for life of Tucoyse Farm, Constantine, Cornwall. There is a farmhouse, a cottage and 155 acres of land. He is 57 years of age now. He has farmed the land himself for the last 24 years. His father before him farmed it for 48 years, and his grandfather for many years before that. The farmhouse is 72 years old and was built for his father on his marriage. The farm is his sole means of livelihood and he has no other place to live. Yet a dispossession order has been made against him, turning him out of the land of which he is the owner and out of the house where he has lived all his life, with no provision made for alternative accommodation or other work. His only offence, if it is an offence, is that he has not maintained a reasonable standard of production on the holding.
>
> It may be said that those facts are not relevant to the cold points of law which have been brought before us, and in a sense this is true. All I say is that if an English farmer is to be turned out of his farm, which he and his family have worked for generations, it should not be done except with the full authority of Parliament and in strict accordance with all the safeguards and provisions laid down by Parliament. . . . Benney had no right of appeal from the decision of the tribunal to anyone. He had no right of appeal to the Queen's courts on the merits of the case. He was bound to leave his home and his land unless he could find some technicality on which to upset the proceedings. That is why the Queen's courts have of late been asked to consider the technicalities of these cases.

The Lord Justice admitted that the point here was a very technical one indeed, since the four acres omitted from the Tribunal's order

[34] *Hansard*, Standing Committees (1946–47) Vol. II, col. 973.

were narrow strips on the edge of the farm; " but technical though it is, I think that Benney is entitled to take advantage of it." [35]

All proceedings under the Act had been halted pending the final decision in these cases, and in the light of the decisions new regulations were drawn up and some effort made to get the ponderous machine into action again. But most of the Committees had given up entirely the idea of exercising sanctions by this time, and the rest determined to take action only rarely and in the very worst cases. Then came the report in 1956 of the Arton Wilson Committee which recommended that the administration of sanctions be shunted off to a small executive panel, while the Committees concentrated on advisory work.[36] Though most of the Committees knew better, the report encouraged the view that the birch could exercise its influence even if it were scarcely ever taken out of the cupboard. Thus the Government might be saved the trouble of either repealing the disciplinary provisions or enforcing them.

Later in 1956 the slight momentum still remaining in the sanctions programme brought to culmination a case begun six years earlier. In 1950 Lady Garbett, farming the 160-acre Horeham Manor, had been put under supervision by the East Sussex County Committee. After three years a proposal was made to dispossess her, but the Agricultural Land Tribunal held against the Ministry on technical grounds. The standard of husbandry remained unsatisfactory, and steps were again taken to dispossess, this time successfully. In 1956 the Ministry took possession of the farm, turning its management over to the County Committee. On its merits the Ministry could hardly have had a better case, and no one who knew the history of more than five years under supervision took seriously Lady Garbett's claim that the farm had been taken " just at the time when we were likely to do well." [37] Politically it could hardly have had a worse one. Already under heavy criticism, the Ministry was now put in the position of seeming to harass a defenceless, widowed gentlewoman, the niece of an archbishop. " Mr. Heathcoat Amory should resign rather than take the responsibility for bundling poor Lady Garbett out of her own freehold house." [38] That

[35] [1955] 2 Q.B. 165–167.

[36] Ministry of Agriculture, Fisheries and Food, *Report of the Committee Appointed to Review the Provincial and Local Organisation and Procedures of the Ministry of Agriculture, Fisheries and Food,* Cmd. 9732 (London: H.M.S.O., 1956). See Chapter 6 for a discussion of other recommendations of the Arton Wilson Committee.

[37] *The Times,* May 29, 1956.

[38] Farmers and Smallholders Association, " Statement Issued by Mr. Oliver Smedley . . . in regard to the case of Lady Garbett," October 5, 1956. (Mimeo.) The Ministry was careful to emphasise that " in considering any dispossession proposal, care is always taken to limit personal hardship, particularly as regards accommodation, as far as possible. In Lady Garbett's case it was understood

the whole affair had a farcical air—the Minister of Agriculture was by this time a most unlikely villain—made it no less damaging. Lady Garbett refused to make the Ministry's task any easier by selling the farm herself or letting it to an approved tenant. Many newspapers had a field day with the alleged bureaucratic oppressions, seldom bothering to point out that the decision had been made not by officials but by fellow-farmers. On this occasion the courts came to the Ministry's defence and no less a person than Lord Goddard C.J. remarked upon the fairness and patience of the dispossession proceedings.[39]

The final blow to Part II of the Agriculture Act was dealt by the report in 1957 of the Franks Committee on Administrative Tribunals and Enquiries. It deplored the combination of executive and adjudicatory activities in the hands of the County Committees and urged that if the " present policy of control over agriculture " were to continue, separate bodies should be established to assume the adjudicatory functions.[40] Under the proposed system the County Committee would prosecute its case before the new tribunal which would be required to give reasons for its decisions. Appeal would lie (as before) to the Agricultural Land Tribunals, and the Franks Committee thought that supervision as well as dispossession orders should be reviewable.

These recommendations would have allocated to the County Committees an exceedingly difficult and unpleasant function, which they would hardly have contemplated accepting even with firm and unqualified Ministerial backing. Since the Government had little inclination to provide such support, the alternative of complete repeal (at which the Franks Committee broadly hinted) appeared easier.[41] Both Government and Committees were now tired of hostile criticism from the Press and judicial or judicially-disposed bodies. Ironically, the one obstacle to repeal was the continued support of sanctions by all the principal agricultural organisations. That the Government nevertheless took that course was, so far as major policy is concerned, unprecedented in the post-war period.

that Horeham Manor Farm was not her only home." Ministry of Agriculture, Fisheries and Food, " Press Notice " MAFF 184/56, May 31, 1956. (Mimeo.)

39 *R.* v. *Hailsham Justices, ex p. Garbett.* See *The Times*, Jan. 31, 1957.

40 *Report of the Committee on Administrative Tribunals and Enquiries,* Cmnd. 218 (London: H.M.S.O., 1957), pp. 34–36. It was suggested that, although the new bodies would have to include local agriculturists, they should be under the chairmanship of someone with legal qualifications who was independent of the area concerned. Though the Franks Committee did not of course give an opinion on the wisdom of continuing the policy of " control," the tone of its remarks did not indicate a sympathetic attitude.

41 " Bluntly, these provisions have been dead for a long time, and I do not want to spend too long on their funeral oration. If there had been doubt about the need to bury them, then the conclusions of the Franks Committee should have clinched the matter." Mr. Hare, Minister of Agriculture, on Second Reading of Agriculture Bill, 1958. *Hansard,* Commons (1957/58), Vol. 584, col. 1110.

Part of the reason for this was Mr. Heathcoat Amory's unusually independent attitude toward the National Farmers' Union,[42] but it was also true that the Union's support of sanctions had become equivocal. It is one of the curious facts of this history that farmers, even as late as the mid-1950s, did not share what was by then a very widespread hostility to sanctions. Generally speaking they were aware that dispossessions were few and mostly well deserved, and they rarely took the view that a man's land is his to do with as he likes. Moreover some landlords and farmers strongly held the view that the "birch in the cupboard" (even if never used) served as a useful public testimonial to the value of agriculture and of agricultural land. Above all there was the National Farmers' Union's strong commitment to the idea that sanctions and economic support would stand or fall together. Hertfordshire farmers were told, for example, at the time of the publication of the Arton Wilson Report, that the Union saw it as the "thin end of the wedge" for doing away with the Agriculture Act altogether. "It simply means this—bring about a breakdown in the working of Part II of the Act and the Government can then throw the whole thing overboard—guarantees and all!" [43]

Yet the Government may have thought, with reason, that the Union's support of Part II, as well as that of the Country Landowners' Association, was by this time mainly a matter of building a record in case of a future "betrayal." It could point to the fact that the new and more definitive guarantees of the 1957 Act had not been tied to sanctions, and it was convinced that when the Union saw that the new guarantees were to be maintained, even when sanctions were dropped, opposition would evaporate.[44] That the Conservatives correctly assessed agricultural opinion is indicated by the fact that the Farmers' Union did not really press its opposition, and the apparent flouting of the Union cost the Government nothing beyond a minor parliamentary embarrassment. In 1958 the sanctions provisions of the 1947 Agriculture Act were repealed.[45]

[42] The difference from his predecessors is indicated by an exchange in the House of Commons in May 1957 before the Conservatives had decided to repeal the sanctions provisions. Mr. Tom Williams asked, "Is the Minister aware that the National Farmers' Union is quite happy that Part II should be administered as well as Part I?" To which Mr. Heathcoat Amory replied dryly, "I am always glad when the National Farmers' Union is happy." *Hansard*, Commons (1956–57), Vol. 570, cols. 4–5.

[43] *The Hertfordshire Farmer*, The Official Journal of the Hertfordshire County Branch of the National Farmers' Union, June 14, 1956, p. 211.

[44] See *Hansard*, Commons (1957–58), Vol. 579, col. 12. The agricultural workers' opposition to the repeal of sanctions had a different basis, a continued but vague attachment to the idea of state supervision of agriculture; but on broad questions of this kind the Conservatives gave no more weight to worker opinion than had Labour in its day.

[45] Agriculture Act, 1958, s. 1.

III

Though the system of sanctions against inefficient farmers and owners has now been repealed, we believe that it has been worth considering its history at some length. The system was central to the 1947 Act; it represented one way of trying to relate state support to improved efficiency; and it called for close co-operation between Government and agricultural interests, providing a striking example of the principle of " partnership " in action.

In spite of a great deal of discussion of the subject, the materials on which to base a balanced evaluation of the Committees' discharge of their disciplinary responsibilities remain extremely elusive. On the one hand there was a steady fire of criticism, much of it ill informed or deliberately distorted. On the other hand there was the wall of official defence which is no more revealing. The reports of the Ryan Committee and the Arton Wilson Committee contain helpful clues, but most of their observations are too general to provide the materials for an adequate evaluation.[46] In an attempt to fill this gap we have conducted extensive interviews with Committee members and their officers, with local representatives of the agricultural organisations and other members of the agricultural community, and with many of the Committees' most vehement critics. We have attended meetings of the Committees, of their subordinate bodies, and of the Agricultural Land Tribunals; and we have examined, in addition to published material, unpublished letters and files relating to a large number of cases where injustice was alleged.

The first and perhaps the most important characteristic of the Committees' most articulate critics is that they seldom distinguished between charges of injustice in the administration of the Agriculture Act and criticisms of the Act itself. Obviously this was often an intentional confusion propagated by interested individuals and organisations, but many people were simply unable to understand the conception of justice on which the sanctions were based. One landlord who tried unsuccessfully to turn out his tenant wrote to the Farmers and Smallholders Association, " What I cannot understand is why when one has bought a thing it is not his." [47] These sentiments were echoed in an article in the *Picture Post* called " Is This Justice? " " It is clear that Mr. Trechman has been acting under the assumption that, just because the property was bought for him, it was his to do with as he liked." [48] It is significant that in this article three cases of

[46] We have, however, had the opportunity of examining much of the valuable unpublished materials upon which these reports were based.

[47] From the files of the Farmers and Smallholders Association.

[48] July 24, 1954, p. 34.

" injustice " are described, and in only one of them is it even claimed that the " victim " had fulfilled his obligations under the Agriculture Act.

In spite of a now widespread impression to the contrary, the sanctions were not manifestly wrong in principle. In the first place, the view of sanctions as a *quid pro quo* is not unreasonable, although it had less practical effect on public opinion and Government policy than the National Farmers' Union had expected. The state assumed coercive powers only because it was also providing economic support. It is true that the agricultural organisations might (and in later years sometimes did) argue that the state's treatment of other industries entitled agriculture to some degree of unconditional support. But their hearty assent to the linking of moderate obligations to considerable benefits strengthened the case for sanctions. Those who objected to *both* Parts I and II of the Agriculture Act were on better ground.

Any broader attack upon the principle of sanctions rests on the assumption that comprehensive state intervention in the affairs of an industry is intrinsically less satisfactory or desirable than a more " automatic " system of market reactions. This contention raises issues which are much too broad and intricate to explore here. It should be noted, however, that once the state had embarked upon intervention in agricultural affairs, it became inevitably drawn into establishing some criteria by which to regulate its distribution of aid. It is true that the chosen criteria might have been those associated with business efficiency, with the state simply utilising the market mechanism. In the case of agriculture, though, good business is far from being equivalent to good husbandry. If the land is to be treated as a " sacred trust," whose condition and upkeep ought to be maintained at a satisfactory level irrespective of immediate financial profit, some more direct system of state control becomes necessary. In accepting this conception, the framers of the Agriculture Act may have taken a wise view of the state's agricultural objectives.

The state-directed, farmer-operated disciplinary system was not unreasonable on its face or necessarily wrong in principle. In our view, it cannot be judged without a careful examination of how it actually worked. Three questions need to be considered. First, how fair was the procedure for supervision and dispossession, and how much substance was there in the many accusations of partiality and injustice? Second, what was the value of a sanctions programme in peacetime? Third, why did the system fail, and was its failure inevitable? We shall treat these three questions in turn.

(a) The procedure for applying sanctions does not appear to have

been inequitable; indeed, it is doubtful if further procedural safeguards would have allowed the system to work at all. The criticisms of the Franks Committee and the hostile comments of many judges overlooked this point. The Franks Committee condemned the County Committees on the grounds that their mixture of executive and adjudicatory functions was " wholly undesirable." " Given such a combination the parties cannot feel that their case will receive a fair hearing and be impartially decided." [49] But this was a false reading of the Committees' function.[50] Their task was not to sit as independent judges but to use a mixture of advice and (where necessary) coercion in order to uphold certain minimum standards of husbandry and estate management. The farmers' judicial protection lay elsewhere, in the right of appeal to an independent tribunal.

Two examples may be given of this point. The Franks Committee considered the provisions for making representations to be a judicial protection and asserted that it did not meet the elementary requirement " that citizens should know in good time the case which they will have to meet." [51] The hearing was intended, however, to allow the Committee and the farmer concerned to discuss whether there *was* a " case " for disciplinary action and to enable the Committee to form some judgment about the man with whom it was dealing. Was there some member of the Committee whose advice he might take? Did he need to be threatened, or was he now genuinely desirous of improving so that no further formal action was necessary? No doubt the farmer was entitled to be told before the hearing why the Committee was considering disciplinary action, but this was not intended as an indictment carrying a series of allegations which had to be found true or false. An unco-operative farmer might be asked what he would do in the Committee's place, and though a judge does not ask such a question, it was reasonable for the Committee to do so.

Similar considerations apply to the supervision order itself. The Franks Committee viewed it as a form of punishment and therefore recommended that an appeal should lie to the Agricultural Land Tribunal. Of course it was true that the imposition of a supervision order " must affect reputation and standing," [52] but the error lay in the strict dichotomy between measures that are " penal " and those

[49] *Report of the Committee on Administrative Tribunals and Enquiries,* 1957, p. 35.
[50] See R. M. Jackson, " County Agricultural Executive Committees " (1952) 68 L.Q.R. pp. 374–375. It is true that in settling disputes between landowners and tenants, the Committees acted as adjudicatory bodies.
[51] *Report of the Committee on Administrative Tribunals and Enquiries,* 1957, p. 17.
[52] *Ibid.* p. 36. The Franks Committee asserted that " a substantial part of the agricultural community " regarded supervision orders as penal measures, but it had at the same time to record the opposition of the National Farmers' Union and the Country Landowners' Association (as well as the Arton Wilson Committee) to an appeal from these orders.

that are not. The supervision order was actually a little of both. The Franks Committee recommendations would have imposed such a procedural burden on the Committees that no farmer could reasonably have been expected to serve on them, and it would have thoroughly judicialised a programme of advice and discipline which was most effective when its judicial and penal aspects remained in the background. The Committees' first task was to rehabilitate inefficient farmers, formulating a "case" for dispossession only as a last resort.

The Agriculture Act attempted to substitute practical and representative administration for a portion of the traditional judicial protections. Obviously this left some room for error and injustice, but there was no sure procedural or judicial safeguard that would not have strangled the advice-discipline programme. Moreover, the number of cases where Committees treated individuals less fairly than courts or other judicial bodies would have done was remarkably small. Perhaps the most serious criticism that could be levelled at the Committees was their tendency to confuse informality with secretiveness. Once they decided to take disciplinary action, they sometimes took the view that all that mattered was getting on with it. Having stretched their patience so far, they were naturally irritated by further delays, and they sometimes deliberately kept the formal record scanty in an attempt to reduce the chances of their being reversed. As a consequence, a farmer sometimes received no clear idea of what the Committee thought was a reasonable standard to aim at, beyond the informal, oral, and not always consistent remarks of visiting panels and advisory officers.[53] This defect was gradually being removed by Ministerial direction which, although less forceful than it ought to have been, was certainly preferable to a rigid judicialising of Committee procedure.

More dramatic, though in fact much less significant, were the sinister possibilities inherent in control by fellow farmers who were also business competitors; and these were eagerly exploited by the Committees' critics. The Farmers' Rights Association (an organisation disbanded shortly after the war) protested:

> The farmer once evicted, the Agricultural Executive Committee may then force the sale or the letting of the farm to one of its

[53] See for example *The Times*, May 23, 1956, where a farmer is reported as alleging that he was given no reasons for the Committee's issuing a certificate of bad husbandry against him until he had lodged his appeal to an Agricultural Land Tribunal. Several cases of failure to provide timely and reasonably full information to farmers in dispossession cases have been found in the files of the Farmers and Smallholders Association.

> own nominees who may be, and often has been, a member of the very Agricultural Executive Committee which ordered the dispossession, or of another Committee, or he may be a son or relative of a member, or a friend or business associate.[54]

There is little doubt that there were some such cases during the war, and in 1947 the Minister reported that his approval was required for any transfer of compulsorily acquired land to a Committee member.[55] It is extremely difficult, however, to find concrete charges relating to the post-war period which have even the colour of probability. In April 1953, Sir Waldron Smithers, the Committees' chief Parliamentary critic, asked the Minister of Agriculture " if he is aware that a number of farms which have been taken over by him under the Agriculture Act, 1947, have been allocated to members of the county agricultural executive committees and to their relatives? " Sir Thomas Dugdale replied that he was not aware of any such cases, and he challenged Smithers to give names, which the latter was unable to do.[56] A year later a specific instance was at last revealed but it was perfectly innocuous.[57] If there were such cases they were certainly outnumbered by those where Committee members refrained, even at some cost to themselves, from the appearance of private gain as a consequence of their public duties.

Moreover, the Agricultural Land Tribunals were in practice a strong safeguard. Of 1,926 appeals from decisions of the Minister heard between March 1, 1948 and February 28, 1958, 544 were allowed. The majority of these cases were concerned with landlord-tenant cases and other actions taken under the Agriculture Act, and the record over dispossession cases initiated by the state was slightly less favourable to appellants; 42 out of 177 appeals were allowed. Nevertheless, this does not look like a record of ministerial domination, and despite certain vagaries over their appointment, the Tribunals always behaved as completely independent bodies. They reheard

54 *The New Morality* (Church Stretton, Salop: The Farmers' Rights Association, n.d.), p. 3. In this pamphlet three cases are described where, after dispossession, farms were let to a member or relative of a member of the Committee, but all cases relate to War Agricultural Executive Committees.

55 *Hansard*, Commons (1947–48), Vol. 445, col. *437*.

56 *Hansard*, Commons (1952–53), Vol. 514, cols. 2320–2321. Smithers' retort, " What about the *Odlum* v. *Stratton* case? " only revealed the groundlessness of his charge. The *Odlum* case (1946) reflected no credit on the County Committees involved nor on the then Minister; but it arose during the war and it had no bearing on the point at issue.

57 In reply to a question the Minister of Agriculture reported that certain requisitioned land held by the East Sussex County Committee was let to a man who became a member of a sub-committee three years later, and other land to a Committee member whose farm adjoined it. *Hansard*, Commons (1953–54), Vol. 531, cols. 1369–1370. There was no reason to believe that these were other than routine dispositions.

each case on its merits and their decisions were final.[58] The impression stimulated by the *Woollett* case and fostered by the Ministry's critics that the Tribunals were somehow tainted never had any foundation in fact. As we have seen, the law courts have itched to review dispossession cases " on their merits," but the crux of these agricultural cases was the particular application of general rules of good husbandry and estate management. There can be no doubt that the practical judgment of the Committees and the Tribunals on this point was far superior to any that could have been expected from the ordinary courts.

All this is not to deny that cases of genuine hardship did arise in the administration of sanctions. How could it have been otherwise? Even though dispossession was rare and generally well-deserved, it still entailed a severe blow, particularly in the light of farmers' traditional attachment to their own holdings. The opposition of " human facts " and public policy did indeed raise hard questions, as may be seen from these two comments on a dispossession case, one by the Minister and the other by the farmer himself.

> Mr. —— is an owner-occupier who has been under supervision for both his farming and his estate management. The conditions on his farm were first brought to the notice of the —— Agricultural Executive Committee . . . twelve months after he took possession of the farm. At that time the Committee found that the cattle were suffering from malnutrition and that no hay, straw or other feedingstuffs were available for them. The pasture land was poor and the arable dirty. The farmhouse and buildings were in a very poor state.
>
> I am sure that Mr. —— was given every opportunity both to improve the farm and to put his views on the matter to the Committee during the period of supervision. The action which has been taken was necessary in the interests of good husbandry.[59]

In contrast to the Minister's cool reasoning is the farmer's heartfelt outburst. He claimed that his wife had died as a result of harassment from " this lot " at the County Committee.

> I feel very much the Coronation year when there will be plenty of joy, and the likes of us that have led a fair straight life all

[58] Thus unlike most administrative tribunals they complied with the Franks Committee dictum that all such tribunals should not be " part of the machinery of administration " but " independent of the Department concerned." *Report of the Committee on Administrative Tribunals and Enquiries*, 1957, p. 9. This view may have been mistaken (see, for example, the criticisms in J. A. G. Griffith, " Tribunals and Inquiries " (1959) 22 M.L.R. 125), but it is curious that the Franks Committee which was otherwise so critical of the administration of sanctions did not give weight to this point.

[59] From the files of the Farmers and Smallholders Association.

> along, we can be turned on the road as the law stands now, if we had not tried it would be different, but we have tried, and tried hard, and the place has improved, but we are high up and one of those out of the way places.[60]

One friend of the Farmers and Smallholders Association wrote privately, with respect to a case he had been asked to investigate, that dispossession was probably justified under the Agriculture Act. "But the human fact remains that a man with eleven children is being turned out of his house and home because a variety of officials do not like the way he farms his land."[61] The Committees were inevitably instrumental in causing hardship of this kind, but they could not justly be accused of callously disregarding it. It is very doubtful if "judicialising" their procedure would have made the Committees any more sympathetic or lenient, but it would certainly have made them more rigid and considerably less effective.

As representative local bodies, the Committees' strength lay in their capacity to administer an acceptable programme of advice, aid, and coercion. It was not easy to push such a locally sensitive machine into effective action; it would have been quite impossible to have done so if its proceedings had been subordinated to strict judicial methods. Still less realistic was the Franks Committee remedy of requiring the Committees to act as prosecutors before some separate tribunal. The Conservative Government admitted that the Committees neither would, nor could be expected, to function in this way.[62] There were in fact only two ways of administering Part II of the Agriculture Act. One was to utilise representative lay bodies as the basic administrative units with provision for appeal; the other was to entrust enforcement to government officials who would have to prove their case, with full judicial safeguards, before some independent body (again with provision for further appeal). It is most improbable that farmers would have preferred the juridical charms of the latter course to the practical advantages of the former. On balance too their preference would have been justified. Whether or not the Committees were effective administrators, they were reasonably humane ones. Far from being insensitive to personal hardship and anxious to throw their neighbours off their farms, they

60 *Ibid.*

61 *Ibid.* Two cases which have become classics in the anti-Committee literature are those of a Mr. Bell who shot himself when ordered to quit his farm by the Northumberland "War Ag" and Mr. George Waldon who was killed in 1940 resisting the efforts of police officers to evict him after he had been dispossessed by the Hampshire Committee. These were, of course, wartime cases when action was speedier and safeguards far less. A. G. Street, one of the most articulate opponents of the Committee system, took the latter case as the inspiration for a novel, *Shameful Harvest* (London: Faber and Faber, 1952).

62 *Hansard,* Commons (1957–58), Vol. 584, col. 1111.

were all too willing to find reasons for avoiding the imposition of sanctions—the farmer's illness, his financial difficulties, his family responsibilities, or his advanced age. They resembled over-indulgent parents, saving the rod and spoiling the child, far more than some stone-hearted rural Gestapo trampling down the rights of British yeomen.

(b) The practical value of the sanctions policy under peacetime conditions is much more difficult to judge than the question of administrative justice. Despite all the controversy, the Committees' use of their disciplinary powers was not numerically very considerable. During the ten-year existence of Part II of the Agriculture Act only 377 farmers and 23 landowners were dispossessed, though the numbers placed under supervision—4,200 farmers and 811 owners—were more considerable.[63] While it cannot really be inferred that supervision on its own caused all but a few of these latter to "reform,"[64] it is true that the use of supervision orders, and the considerable patience with which they were administered, did have some direct effect upon the practices of about 1½ per cent. of all farmers. That is still a very small proportion, but fear of Committee action spread its influence over a wider circle. Moreover, sanctions provided, as we have seen, the occasion for much of the Committees' advisory work. They served as a specific job of work to do, holding the Committees together and giving unity and force to their other activities. There is little doubt that if the programme of sanctions had not come under such heavy fire from 1953 onwards its total impact would have increased substantially.

On the other hand, was it worthwhile trying to define and enforce standards of farming efficiency once the urgency of increasing home food production had disappeared? The link with national production objectives, however awkward in the long run, did furnish a definite yardstick. A farmer could reasonably be said to be inefficient if his land was plainly underfarmed and his output was low; but such verdicts were much less easy and also, it seemed, less necessary once the emphasis had shifted from increased production to economic efficiency. Particularly when the degree of economic security was lessened, the farmer's own judgment of his economic interest became entitled to at least prima facie respect. Nevertheless the continued use of Part II powers would have had two real advantages. First it would have helped to ensure that the condition of farms was such that they could expand output rapidly and without too much difficulty

[63] See table at p. 395, below.

[64] This was the view of the ex-Minister of Agriculture, Mr. Williams. *Hansard*, Commons (1957–58), Vol. 584, cols. 1126–1129. But of course many supervision orders lapsed because (particularly after 1953) the difficulties of dispossession seemed too great to warrant further action.

or expense whenever the need to do so returned. This seems a not unreasonable condition to attach to a system of state support that is partly intended to insure against just such economic or strategic contingencies. Second, the existence of an extensive system of state support, even in the form the Conservatives have given it, tends to some extent to shield the inefficient farmer against economic forces. Where the play of the market in inducing turnover is thus limited, insistence on minimum technical standards would be a way of reducing misuse or wastage of agricultural land. It can reasonably be argued that state subsidies ought not to be paid to definitely incompetent farmers when much better qualified men cannot secure a suitable farm.

A programme aimed at these relatively limited ends would have had to rest on minimum standards of husbandry and management suitable for normal peacetime use. These would have aimed (a) at keeping farm fixtures and equipment in a reasonable state of repair and the land itself in "good heart" by keeping drains clear, weeds under control, etc.; and (b) at requiring some minimum standard of technical efficiency in such matters as stock management and breeding and in the use of crop strains. These standards would have been concerned with technical rather than economic proficiency, and they would have been fixed at a very modest level and administered carefully and sympathetically. Their administration would have required a more systematic, though probably slower, use of the farm survey and a close coordination of the survey with advice and supervision. Dispossessions would have been necessary, but they need not have been numerous, so long as it was reasonably clear what the minimum standards were and that they would in fact be enforced. While other methods might accomplish the same objectives, such an advice-discipline programme as this would have represented a reasonable application of the principles of the Agriculture Act under peacetime conditions. But by the time efforts—rather half-hearted efforts, it is true—were made to move in something like this direction, the whole programme was almost dead, and the Committees seemed too old to learn the necessary new tricks. This leads to the third and last question about the administration of sanctions.

(c) Why did the sanctions experiment fail, and was this failure inevitable? We have suggested that the principle itself was by no means indefensible and that the methods of application were on the whole equitable. Nevertheless such unusual coercive powers were bound to become increasingly difficult to apply as "normality" returned, and they called for skilled and delicate administration.

During the war the justification for sanctions was obvious, and administration was thereby simplified. The standard to be applied was clear—maximum production with little regard to cost—and in those days of rudimentary procedural requirements the means were ample. The Agriculture Act attempted a transition. Sanctions were an expression of the view that farmers were to be regarded as holding the land on trust for the nation, as the price review was an expression of the view that the public interest required agricultural stability. The standard was to be efficient production rather than maximum production, and the Committees' wartime powers were limited. This transition would have been difficult in any event, but because of post-war conditions it was not made in 1948 when the Committees were reconstituted on a statutory basis. The Committees were immediately caught up in a series of post-war production drives and continued to wear their war hats—and the attitudes under them. This unquestionably made them more resistant to change than they otherwise might have been.

The importance of the Committees' "attitude" and "morale" suggests the vulnerable character of Committee administration. The basic assumption of the system was that such drastic powers could carry the support of affected groups only if they were entrusted to lay, representative bodies. No doubt this was true, but it has to be balanced against the tendency of such bodies to be easily discouraged, quick to take offence, and sometimes unduly sensitive to outside opinion. The great emphasis laid in most discussions of sanctions on individual rights tends to obscure the fact that certain duties were laid upon farmers and landowners and that the Committees were responsible for seeing that these duties were performed. The exercise of this responsibility confronted enormous hazards. At each administrative level disciplinary action was decided upon only reluctantly, and each of the lower bodies resented the frequent delays and lack of support of those higher up. The district committees—whose recommendations had to pass through the cautious hands of sub-committee, Committee and the Ministry—were the first to become discouraged; and as a consequence they (and the farm survey) had begun to deteriorate even when the Committees were at the peak of their activity.

As time went on reversals by the Agricultural Land Tribunals began to mount—because of procedural defects, or different conclusions on the merits, or last-minute improvements on the farmer's part. Almost every Committee had stories to tell of farmers, immune to Committee advice and threats extending over many years, who made gigantic improvements between the time of the final Committee

decision and the Tribunal hearing. Buildings repaired, weeds cut, land ploughed, crops sown—and allowed to lapse into their former neglected state once a favourable Tribunal decision was secured. Doubtless the Committees exaggerated, but they were naturally dubious of quick improvements when their own lengthy efforts had been so fruitless. When the Tribunal was deceived and the improvements were not lasting the Committee faced the dismal prospect of beginning again the whole process of inspection, advice, supervision, representation and threats.

It was the fate of this part of the Agriculture Act to run foul of the courts' jealous distaste of certain features of delegated legislation and administrative justice and of a more general revulsion against state planning. The well-founded parts of judicial criticism related to general issues which were not confined to agricultural legislation and which need not have undermined the basic principle of agricultural self-discipline.[65] In so far as the courts and the Franks Committee went further and, on the basis of common law notions, condemned by implication this principle itself, they revealed considerable ignorance of the real problem, as well as of parliamentary intention and rural opinion. Still less well grounded was the clamour from the urban press which chose to view the generally cautious and humane administration of a widely endorsed Act of Parliament by representative committees as if it were oppressive tyranny by Ministry officials. Distorted newspaper reports and recollections of stories of wartime injustice, strengthened by judicial *obiter dicta* and the often ill-informed criticism of the Franks Committee, managed to foster (in the towns) an impression of jack boots in the countryside which would have been comical in its ignorance and exaggeration had it not been so influential.

The result of all these forces was that all but a few of the Committees had succumbed to a kind of psychological exhaustion long before sanctions were formally withdrawn. Yet the failure of this experiment cannot be attributed finally to the Committees. They would have continued to toil at the task if they had had sufficient encouragement and guidance from the Central Government. The qualification is crucial, for such representative bodies could not be expected to take full responsibility for disciplinary measures; nor did they have the capacity or the knowledge to direct the programme unaided. Unfortunately for that programme, the guidance which they received was fitful and ambiguous. The hostility of the Committees to proposals to deprive them of other administrative functions

65 Particularly objectionable (but nothing to do with the principle of sanctions) was the immunity given to the Minister of Agriculture in respect of his procedural errors.

complicated the reorganisation of sanctions. But the Ministry brought much of this on itself by its failure to prepare the ground carefully enough and by its unwillingness, once the Committees had expressed their opposition, either to abandon the reform or openly to press it forward. The Committees' sullen distrust of the Ministry engendered by this dispute was strengthened by the flabby and inconsistent advice they were given about the farm survey and sanctions—by their experience, for example, of being urged to renewed efforts in 1952 by the same Government which lost interest in the programme in little more than a year. Perhaps the programme was not worthwhile under peacetime conditions—that question the reader may decide for himself—but it was not repealed out of any deliberate conviction to that effect. It was repealed because those in authority allowed events to decide for them.

ACTIONS TAKEN UNDER THE AGRICULTURE ACT, 1947, PART II

Supervision and Dispossession

(Figures supplied by the Ministry of Agriculture, Fisheries and Food)

Action	1948 (ten months)	1949	1950	1951	1952	1953	1954	1955	1956	1957	1958 (one month)	TOTAL
Estate management supervision orders made under s. 12 (1)	25	73	159	163	186	122	53	18	12	—	—	811
Husbandry supervision orders made under s. 12 (1)	530	838	724	608	812	421	183	51	30	3	—	4,200
Dispossession on grounds of bad estate management [66]	—	—	1	9	1	5	5	1	1	—	—	23
Dispossession on grounds of bad husbandry [67]	1	23	64	69	112	82	19	6	—	1	—	377

[66] Certificates made under s. 16 enabling the Minister to purchase the land compulsorily.
[67] Orders made under s. 17 terminating an occupier's interest or occupation.

CURRENT SURVEY

PAGE

United Kingdom 396
Commonwealth and Dependent Territories 421

This digest, which has been compiled by Gordon Borrie, Barrister-at-Law, covers the period July 1, 1960, to September 30, 1960.

UNITED KINGDOM

Compulsory Purchase

Compensation

The Acquisition of Land (Rate of Interest on Entry) Regulations, 1960, increase from 5½ per cent. to 6½ per cent. per annum the rate of interest payable where entry is made, before payment of compensation, on land in England and Wales which is being purchased compulsorily (S.I. 1960 No. 1311).

The Acquisition of Land (Rate of Interest on Entry) (Scotland) Regulations, 1960, increase from 5½ per cent. to 6½ per cent. per annum the rate of interest payable where entry is made, before payment of compensation, on land in Scotland which is being purchased compulsorily (S.I. 1960 No. 1312).

Courts

Legal Aid and Advice

England. The Legal Aid (Assessment of Resources) Regulations, 1960, consolidate, with amendments, the Legal Aid (Assessment of Resources) Regulations, 1950, and subsequent amending Regulations. They include amended provisions for the assessment of resources where applications for legal aid are made by or on behalf of children; for allowances against income in respect of income tax and adult dependants; for allowances against capital in respect of the applicant's dwelling-house, insurance policies and dependants; and for a further allowance against capital where the applicant has a small disposable income (S.I. 1960 No. 1471).

The Legal Aid (General) (Amendment No. 2) Regulations, 1960, amend the Legal Aid (General) Regulations, 1960, so as to ensure that the qualifications for legal aid for taking steps to assert or dispute claims under section 5 of the Legal Aid and Advice Act, 1949, are, so far as practicable, the same as the qualifications for legal aid otherwise available under the Act (S.I. 1960 No. 1472).

Scotland. The Legal Aid (Scotland) (Assessment of Resources) Regulations, 1960, consolidate, with amendments, the Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950, and subsequent amending Regulations. They include amended provisions for the assessment of resources where applications for legal aid are made by or on behalf of children; for allowances against income in respect of income tax and adult dependants; for allowances against capital in respect of the applicant's dwelling-house, insurance policies and dependants; and for a further allowance against capital where the applicant has a small disposable income (S.I. 1960 No. 1395).

The Legal Aid (Scotland) (Section 5) Amendment (No. 2) Regulations, 1960, amend the Legal Aid (Scotland) (Section 5) Regulations, 1960, so as to provide that an additional allowance against capital shall be available to persons applying for legal aid under section 5 of the Legal Aid (Scotland) Act, 1949, in

matters not involving litigation. Otherwise, the financial conditions of this form of legal aid are brought into closer conformity with the financial conditions of legal aid in litigation, but persons now entitled to section 5 legal aid will not in practice cease to be so entitled (S.I. 1960 No. 1559).

Statistics

England and Wales. The civil judicial statistics relating to the Judicial Committee of the Privy Council, the House of Lords, the Supreme Court of Judicature, county courts and other civil courts, for 1959, have been published (Cmnd. 1126).

Scotland. The civil judicial statistics relating to the House of Lords, the Court of Session, Sheriff Courts and other civil courts, licensing courts, certain legal and public departments and Bankruptcy for 1959, have been published (Cmnd. 1047).

Crown Proceedings

Contract

Fettering future action. In 1945, the Minister of Works, acting on behalf of the Crown and in exercise of powers conferred by the Defence (General) Regulations, 1939, requisitioned premises which had been demised in 1937 by the Commissioners of Crown Lands for a term of 25 years. The premises were derequisitioned on September 3, 1955. The lessee paid no rent between April 5, 1945, until July 5, 1955, and the landlords brought proceedings claiming arrears of rent. The lessee alleged that she had been "evicted" by the requisitioning and that, accordingly, payment of rent had been suspended. It was conceded that the Crown was one and indivisible both as lessor and requisitioning authority. *Held,* that, since the entry was by the Crown in the proper exercise of its executive authority, it did not amount to an eviction, and rent, accordingly, continued to be payable. *Per* Lord Evershed M.R. and Ormerod L.J. The limited intention of the Crown to deprive the lessee of her enjoyment was not consistent with the intention requisite to an eviction. There was no express covenant for quiet enjoyment, and such a covenant could not be implied so as to limit the Crown's future proper exercise of its powers and duties under statute. *Per* Devlin L.J. Even if there was such an express covenant it must by necessary implication be read to exclude those measures affecting the nation as a whole which the Crown took for the public good: Commissioners of Crown Lands *v.* Page [1960] 3 W.L.R. 446 (applying *Upton* v. *Townend* (1855) 17 C.B. 30, and *William Cory and Sons* v. *City of London Corporation* [1951] 2 K.B. 476, C.A., and distinguishing *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227.

Government Functions and Appointments

Advisory Committees

Political and Economic Planning (PEP), an independent non-party organisation set up in 1931 to study problems of public concern in Britain, published in July a report on *Advisory Committees in British Government* (Allen and Unwin, pp. 228, 25s. 0d.). The report is concerned with the advisory committees attached to Government departments which are of a standing or permanent rather than a temporary character. It does not deal with Royal Commissions, committees of inquiry, or other temporary bodies, or with local and regional committees. Advisory committees are particularly significant for the modern system of Government, the report says, because they illustrate both the development of Government contacts with organised interest groups and the provision of specialist and technical advice in many fields.

The report distinguishes between three main types of advisory committee:

1. Consultative committees—bodies where representatives of the Government

meet people from outside the Government machine (usually the nominees of interest groups) for general discussion. The main consultative committees are in the industrial field, and they include the National Production Advisory Council on Industry, the Economic Planning Board and the Engineering Advisory Council.

2. Expert committees, which constitute perhaps 60 or 70 per cent. of all advisory committees. They formulate recommendations for action in a particular field. Included among them are the Central Health Services Council, the National Advisory Council on the Training and Supply of Teachers, the Scientific Advisory Council and the Committee on Social Development in the Colonies.
3. Committees for independent administration—bodies with advisory status which in practice decide matters themselves, *e.g.*, the Central Training Council in Child Care, the Air Transport Advisory Council, the Air Safety Board and the Capital Issues Committee. Also included in this category are some committees (*e.g.*, the Political Honours Scrutiny Committee and the panel of advisers at the Treasury which hears appeals in security cases) with almost a quasi-judicial character and some negotiating committees (*e.g.*, the Burnham Committees on the salaries of teachers and the Police Council for Great Britain).

The report calculates that there were 484 separate and distinct advisory committees at the major Government departments in Great Britain at the beginning of 1958, of which 63 were attached to the Scottish departments. All these are appointed by the Minister concerned. Probably the majority of members of advisory committees are appointed, not as direct representatives, but through some form of nomination or suggestion from outside bodies. Apart from civil servants (who are on almost all the committees) the members include industrialists, trade unionists, university and industrial scientists, local government officials and councillors and experts from many other walks of life. The term of service varies. Occasionally it is for a indefinite period, but usually reappointment is possible. Payment is rare, being confined to committees which involve a good deal of work.

The fundamental cause of the rise of advisory committees, the PEP report says, lies in the expansion of Government activities and in their greater complexity. The basic function of advisory committees is to help to supply "a department's need for consultation or expert advice or autonomous machinery." But subsidiary purposes also play a part in their establishment. "These include placating outside pressure, launching a new policy on the public, and avoiding criticism on delicate issues." "The advantages of committees over other methods of obtaining advice," the report goes on, "lie usually in their more systematic procedure, in the more comprehensive personal contacts which they ensure, in their general convenience and stability and in the more formal commitments which they produce." They are now "generally accepted as stable and essential parts of the governmental system" (Commonwealth Survey, C.O.I., August 30, 1960).

Inspectorate

Fire. The report has been published of H.M.'s Chief Inspector of fire services (counties and county boroughs; England and Wales) for 1959 (Cmnd. 1122).

Mines. The report has been published of H.M.'s Inspectors of mines and quarries, 1959, of the Scottish Division (H.M.S.O. 41–28–1–59).

Police. The report has been published of H.M.'s Inspectors of constabulary for England and Wales, 1958–59 (H.C. 257 of 1959–60).

Ministers' Functions

Education. The report, with statistics, of the Ministry for 1959 has been published (Cmnd. 1088).

Health. Part I of the report of the Ministry for 1959 has been published (Cmnd. 1086).

Pensions and National Insurance. The report for 1959 has been published (Cmnd. 1133).

Research

Agricultural Research Council. The report for 1958–59 has been published (Cmnd. 1069).

See also PUBLIC AUTHORITIES (below, p. 413).

HIGHWAYS

Access

The plaintiffs were the owners of a garage with a means of access to the highway. The defendant highway authority proposed to erect an island structure in the centre of the access leaving two means of access to the garage on either side. *Held,* that the highway authority had power to erect the structure under section 67 of the Highways Act, 1959: CHING GARAGE *v.* CHINGFORD CORPORATION [1960] 1 W.L.R. 947; [1960] 3 All E.R. 79, C.A. (reversing decision of Lord Parker C.J. [1959] 1 W.L.R. 959).

HOUSING

Debate

The House of Commons debated housing in London on July 27, 1960 (627 H.C. Deb. 1564–1614).

Returns

The Housing Returns for Scotland (Cmnd. 1112) and for England and Wales (Cmnd. 1119) have been published.

Subsidies

The Ministry of Housing and Local Government has issued a Circular referring to the Local Employment Act, 1960 (see [1960] P.L. 209). It had been stated during the passage of the Bill through Parliament that subsidy would be available in appropriate cases for new houses provided by a local authority or housing association for incoming key workers required by industries establishing themselves in development districts. No special provision was made in the Act for payment of a housing subsidy, as the terms of section 3 (2) (*d*) of the Housing (Financial Provisions) Act, 1958, are wide enough to permit payment of a subsidy of £24 a year for 60 years for each new dwelling provided for this purpose. The circular outlines the procedure for application for a subsidy and attention is drawn to Circular No. 33/56 (Circular No. 44/60).

Summary

A Summary has been published of the number of new houses built in Great Britain up to July 31, 1960 (Cmnd. 1145).

INQUIRIES

Transport

Air. The report has been published of the inquiry on the accident to Viscount 802 G–AOMU on January 7, 1960, at London Airport (C.A.P. 166).

LOCAL GOVERNMENT

Contracts of Local Authorities

The Corporate Bodies' Contracts Act (8 & 9 Eliz. 2, c. 46) received the Royal Assent on July 29, 1960. It gives effect to certain recommendations in the Law Reform Committee's Eighth Report (Cmnd. 622) by enabling corporate bodies (not being companies within the meaning of the Companies Act, 1948 (11 & 12 Geo. 6, c. 38)) to enter into contracts with no more formality than is required in the case of an individual (ss. 1, 2); and nullifying the decision in *A. R. Wright and Son* v. *Romford Borough Council* [1957] 1 Q.B. 431; s. 3 gives power to the Parliament in Northern Ireland to pass similar legislation; s. 4 short title, etc.

The Act, which does not extend to Scotland or (save for s. 3) to Northern Ireland, came into force on July 29, 1960.

The Ministry of Housing and Local Government has issued a circular pointing out that it is necessary to distinguish between the procedure followed by local authorities when deciding to enter into a contract (including the requirements of their standing orders) and the formalities needed before a contract will be binding on the parties to it. Only the latter are affected by the new Act. The new Act exposes local authorities to a new risk, since it widens the field in which councils can be bound through the acts of their agents, and the circular suggests that they will now need to consider whether any changes are required in their own procedure (Circular No. 51/60).

Finance

Rating and valuation. The Valuation Appeals Procedure (Scotland) Order, 1960, has been made. The purpose of this Order is to provide that, if a request for information in pursuance of section 12 of the Valuation and Rating (Scotland) Act, 1956, is made by an appellant or complainer or by an assessor, the information shall be given by May 31 or, if the request is received on or after May 12, within twenty-one days of the receipt of the request (instead of within ten days of the receipt of the request, as at present provided by section 12 (*a*) and (*b*)). The Order also provides that, if a request is made for such information, the appeal or complaint shall not be heard until twenty-eight days after the request is received (instead of fourteen days after the request is received, as at present provided by section 12 (*c*)) (S.I. 1960 No. 1324).

By section 56 of the Local Government Act, 1948, the right to use a wall for the display of an advertising sign is a separate hereditament for rating purposes and must be valued at the rent the right would fetch without regard to the value of any structures erected by the advertiser or whether the right is exercised. The owner of certain premises granted to an advertiser the right to use part of them for the display of an advertisement at a rent of £150 per annum. The advertiser spent money in erecting the advertisement and the Court of Appeal held that this should be taken into account and the rateable value be assessed at £165. *Held,* on appeal, that it was the right only which had to be valued and, as the rent of £150 had been agreed between parties at arm's length, it was the true value of the right: IMPERIAL TOBACCO CO (OF GREAT BRITAIN AND IRELAND) *v.* PIERSON [1960] 3 W.L.R. 235; [1960] 2 All E.R. 780, H.L. (reversing the decision of the Court of Appeal).

Rating return. The return of rates and rateable values in England and Wales, 1959–60, has been published (H.M.S.O. 75–3–0–60).

Offices

The Offices Act, 1960 (8 & 9 Eliz. 2, c. 47), received the Royal Assent on July 29, 1960.

This Act enables the Secretary of State to make regulations (subject to affirmative resolution in both Houses of Parliament (s. 1 (5)) specifying

standards as to structure, arrangement and operation to be applied in offices for the protection of the health, safety and welfare of employees, and particularises (among other things) the prevention of overcrowding, the provision of washing facilities, the regulation of ventilation and heating, cleanliness and the provision of fire escapes, drinking water and first aid equipment as proper subject of regulation (s. 1 (1)); section 5 provides for the notification to the local authority of any accident which disables a person for more than three days from earning full wages at his own type of work; section 6 provides for enforcement of the Act by local authorities.

This Act which applies to Scotland but not to Northern Ireland, comes into force on January 1, 1962.

See also HIGHWAYS (above, p. 399), NATIONAL INSURANCE (below, p. 404) and TOWN AND COUNTRY PLANNING (below, p. 415).

MONOPOLIES AND RESTRICTIVE PRACTICES

Restrictive Practices Court

Decision. In order to bring a restriction within section 21 (1) (*b*) of the Restrictive Trade Practices Act, 1956, it must be shown that, looking at all purchasers as a collective whole, they can properly be regarded as being denied specific and substantial benefits or advantages if the restriction was removed. By an agreement made between all its members, an association fixed prices at which they sell black bolts and nuts ("fastenings"). The price was arrived at from costings of eleven large manufacturers. The fixed prices were reasonable and profits were not excessive. If there had been no uniform price for the different varieties of fastenings, prices for each item would vary from manufacturer to manufacturer, so that buyers would have to make many inquiries before placing an order, which would greatly increase their administrative costs. *Held,* that the restrictions comprised in the agreement, except for the provisions relating to special quantity discounts and orders obtained from government departments, were not contrary to the public interest: *Re* BLACK BOLT AND NUT ASSOCIATION'S AGREEMENT [1960] 1 W.L.R. 884; 104 S.J. 665; [1960] 3 All E.R. 122, R.P.Ct.

Evidence. During the course of a hearing, where the Phenol Producers' Association were seeking to justify their price restriction policy under section 21 (1) (*b*) of the Restrictive Trade Practices Act, 1956, one of the witnesses, called by the registrar, said that he was buying phenol at prices below those fixed by the association. The registrar sought to exclude this evidence on the ground the witness should not be questioned about his contract which was a confidential trade document and should not be shown to his trade competitors nor should its contents be made known to them. It was directed that "The normal method of giving evidence is by oral testimony. In some instances, as a matter of discretion, we shall direct that the answer of the witness should be written down where it seems to us proper to do so. But there is no advantage to be obtained by that course in the present case with this witness and, therefore, if it is sought to adduce evidence about the actual price he has paid for his phenol, he must give that evidence like any other witness by oral testimony, and he will be subject to cross-examination on it in the same way as any other witness. It may be that in all the circumstances it will not be sought to elicit from this witness the actual price he has paid for his phenol": *Re* PHENOL PRODUCERS' AGREEMENT (PRACTICE NOTE) [1960] L.R. 2 R.P. 49, R.P.Ct.

Restrictive Trading agreements

By August 1, 1960, some 2,300 agreements had been registered. Of these, over 1,030 had been abandoned or had had all restrictions removed from them, while 63 agreements had been referred to the court. In 52 cases, the agreements had not been defended and the restrictions were, therefore, found contrary to

the public interest. Of the 11 agreements defended, 8 had been found contrary to the public interest. In the remaining three cases, one agreement was found consistent with the public interest as was most of a second agreement; a minor part of the third agreement was also judged to be consistent with the public interest.

Dates had been fixed between October 1960 and March 1961 for hearings on nine other agreements and over 120 further cases were in various stages of preparation for hearing. After representations from the registrar, the Board of Trade, under section 12 of the Act, has authorised him to remove 26 agreements from the register as being of no substantial economic significance (Commonwealth Survey, C.O.I., September 13, 1960).

National Health Service

Central Health Services Council

Report of the Council for 1959 has been published, preceded by a statement by the Minister of Health (H.C. 231 of 1959–60).

Hospitals

Debate. The House of Commons debated hospitals in Committee of Supply on July 21, 1960 (627 H.C. Deb. 807–854).

Mental Health. The National Health Service (Functions of Regional Hospital Boards, etc.) Amendment Regulations, 1960, revoke, on the coming into force of the main provisions of the Mental Health Act, 1959, the limitations placed on regional hospital boards which required them in respect of works of construction, reconstruction or alteration in the case only of mental hospitals, hospitals designated by the Minister of Health for the purposes of the Mental Treatment Act, 1930, or institutions for mental defectives, to comply with standards of accommodation laid down by the Minister (S.I. 1960 No. 1240).

Mental Health Service

The Mental Health (Powers of Inspection) Regulations, 1960, provide for the exercise by officers of the Minister of Health, authorised for the purpose, of powers of entry into and inspection of premises in which residential accommodation or facilities for the training or occupation of mentally disordered persons are provided by local health authorities in exercise of their powers under section 28 of the National Health Service Act, 1946 (S.I. 1960 No. 1160).

The National Health Service (Superintendents of Mental Hospitals, etc.) Regulations, 1960, revoke the National Health Service (Superintendents of Mental Hospitals, etc.) Regulations, 1948, which required a superintendent (normally a medical practitioner) to be appointed for each mental hospital or institution for defectives administered by a Regional Hospital Board, and so remove any statutory obligation for the appointment of such superintendents. The contractual rights of superintendents in office are preserved (S.I. 1960 No. 1239). The Ministry of Health has issued a memorandum explaining the purpose of these regulations (H.M. (60) 66).

The Mental Health (Hospital and Guardianship) Regulations, 1960, have been made. These are the principal regulations dealing with the exercise of compulsory powers in respect of persons liable to be detained in hospital or subject to guardianship under the Mental Health Act, 1959. Regulation 2 defines the terms used in the regulations. Regulation 3 revokes the Mental Health (Approval of Medical Practitioners) Regulations, 1960, the provisions of which are re-enacted in Regulation 5. Regulation 4 and the Schedule prescribe the forms to be used for the admission of patients to hospital or their reception into guardianship under Part IV of the Act, and for certain

other reports required under the Act in connection with detention or guardianship. Part III sets out the powers and duties of guardians and responsible local health authorities in respect of persons subject to guardianship. The responsible local health authority must arrange visits at intervals of not more than three months (Regulation 7). All guardians are required to make appropriate provision for the patient's health and welfare (Regulation 6). A guardian other than a local health authority is required to exercise his functions subject to any directions of the responsible local health authority and to give the authority certain information in respect of the patient (Regulation 10). Part IV prescribes the procedures by which patients may be transferred under section 41 of the Act from one hospital to another, from hospital to guardianship, from one guardian to another and from guardianship to hospital. It also provides for the conveyance of such patients (Regulations 17 and 18). Regulation 19 makes provision for the classification of patients removed to England and Wales from Scotland, Northern Ireland, the Channel Islands or the Isle of Man and requires the date of their admission to hospital or reception into guardianship to be recorded. Part VI deals with miscellaneous matters including the service of documents (Regulation 20) and their proof (Regulation 22). Regulation 24 enables certain functions of local health authorities and hospital authorities to be performed by officers and Regulation 25 enables a nearest relative of a patient to delegate his functions under the Act to another person. Regulation 23 enables any patient to write to his solicitor without his letters being opened and Regulation 26 enables the age of a patient if unknown to be determined if it is material for the purposes of the Act (S.I. 1960 No. 1241).

The Mental Health (Registration and Inspection of Mental Nursing Homes) Regulations, 1960, provide for the form of register of mental nursing homes to be kept by county and county borough councils. The regulations specify the information to be included in an application for registration. They also require the registration authority to inspect such homes at least once in each period of six months. Special arrangements are made for the former registered hospitals (S.I. 1960 No. 1272).

The National Assistance (Registration of Homes) (Amendment) Regulations, 1960, apply the National Assistance (Registration of Homes) Regulations, 1949, to residential homes for mentally disordered persons registered in accordance with the provisions of section 19 of the Mental Health Act, 1959; and for this purpose the regulations amend the form of register and prescribe the particulars to be furnished in an application for registration of such a home (S.I. 1960 No. 1273).

Officers

The National Health Service (Superannuation) (Amendment) Regulations, 1960, amend the National Health Service (Superannuation) Regulations, 1955 in two major respects. They provide for the making by employing authorities (which include Regional Hospital Boards, Boards of Governors of teaching hospitals and Executive Councils) of a supplementary contribution towards the cost of superannuation benefits provided under the National Health Service Superannuation Scheme amounting to 1½ per cent. of an employee's remuneration. The present employers' and employees' contributions are respectively 6 per cent. and 5 per cent. in the case of manual workers and 8 per cent. and 6 per cent. in the case of other employees. The regulations also restrict the right to receive interest on superannuation contributions which are returned to an employee on his leaving the National Health Service. Interest will in future be paid only to an employee who leaves the service otherwise than by voluntary resignation, or resignation or dismissal in consequence of inefficiency, fraud or misconduct. Interest will continue to be paid where contributions are returned to the personal representatives of a deceased employee in respect of whom no death gratuity is payable. Subject to certain

limitations, officers who before the regulations would have received interest on their contributions will continue to enjoy that right. The regulations substitute revised actuarial tables for use in the calculation of payments for the conversion of non-contributing service to contributing service and in the calculation of certain transfer values payable by the Minister. In the former case the rate of interest on unpaid instalments is increased from 2½ per cent. to 3¼ per cent. The introduction of the revised tables has necessitated certain consequential amendments to the 1955 Regulations (S.I. 1960 No. 1178). The Regulations were approved by the House of Commons, July 7, 1960 (626 H.C. Deb. 833–844).

The National Health Service (Superannuation) (Scotland) Amendment Regulations, 1960, amend the National Health Service (Superannuation) (Scotland) Regulations, 1955, in the same two major respects as the above Regulations (S.I. 1960 No. 1209). The House of Commons approved the Regulations July 7, 1960 (626 H.C. Deb. 845–849).

See also TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS (below, p. 418).

NATIONAL INSURANCE

Benefits

The National Insurance (General Benefit) Amendment Regulations, 1960, have been made.

By virtue of a disqualifying provision of the National Insurance Act, 1946, benefit under that Act is not payable to a person, or in respect of a person as the beneficiary's husband or wife, for a period during which that person is undergoing imprisonment or detention in legal custody, subject to such exceptions as regulations may provide. The National Insurance (General Benefit) Regulations, 1948, provide for exceptions in certain circumstances; and these Regulations make additions to the circumstances in which the disqualification is removed. In so far as the disqualification would apply to a period of a person's detention between his arrest in connection with a charge against him in criminal proceedings and the end of those proceedings, these Regulations remove the disqualification if, in the result, the person is not ordered to undergo penal detention. In so far as the disqualification would apply to a period of a person's detention as a result of an order made at the end of such proceedings, these Regulations remove the disqualification if the person is liable to be detained in a hospital or similar institution as a person suffering from mental disorder unless he became so liable while undergoing penal detention in accordance with the order. In that case, the disqualification is removed as from the earliest date (if certified by the Secretary of State or the Prison Commissioners) on which he would have been expected to be discharged from the penal detention. Anticipating the coming into operation of the Mental Health Act, 1959, and a corresponding Scottish enactment, the Regulations provide also that if, in such a case, the person's liability to detention in a hospital or similar institution arises under one of those enactments, the disqualification is not to apply unless a direction restricting the person's discharge, given or treated as given under it, is in force.

The Regulations also amend those provisions of the National Insurance (General Benefit) Regulations, 1948, which provide for the suspension of the payment of benefit while the beneficiary is undergoing imprisonment or detention in legal custody. The amendments include those necessary to ensure that the provision made for such suspension will not operate while the beneficiary is liable to be detained in a hospital or similar institution in such circumstances that the disqualification referred to in the preceding paragraph is removed by the provisions there described. The other amendments are of a minor character (S.I. 1960 No. 1282). The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations has also been published (H.C. 275 of 1959–60).

The National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations, 1960, amend the provision in the National Insurance (Unemployment and Sickness Benefit) Regulations, 1948, that a day is not to be treated as a day of incapacity for work if, on that day, a person does any work other than work as a non-employed person or, subject to an earnings limit, work under medical supervision while the person is a hospital patient. These Regulations increase that earnings limit; they apply it also to work done as a non-employed person, and require that such work, to be excepted, must be done with good cause. The Regulations also amend the rules of behaviour which are required to be observed by specifying the work which is described above as work which may be done without infringing those rules (S.I. 1960 No. 1286). The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations has also been published (H.C. 277 of 1959–60).

Contributions

The National Insurance (Contributions) Amendment (No. 2) Regulations, 1960, have been made.

Part II of these Regulations amends the National Insurance (Contributions) Regulations, 1948, in relation to persons imprisoned or detained in legal custody. Such persons, if sent to hospital because of mental disorder, will not be subject to the special provisions, under which persons imprisoned or detained in legal custody are not normally liable to pay or entitled to be credited with contributions; in the case of a person transferred to hospital while serving a sentence this will apply for any period after his sentence would have expired had he not been so transferred. The Regulations also make other persons imprisoned or detained in legal custody eligible to have contributions credited to them in some cases (for example, while continuing education in an approved school or a remand home) and end their exception from liability to pay contributions while working as employed persons.

Part III of these Regulations contains transitional provisions enabling contributions to be credited to such persons, for the purpose of the right to future benefit, in cases where they were not previously credited because of a restriction on credits which has now ceased to apply (S.I. 1960 No. 1285). The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations has also been published (H.C. 275 of 1959–60).

A report has been published by the National Insurance Advisory Committee (Chairman. Sir Ifor Evans) on the preliminary draft of the National Insurance (Married Women) Amendment Regulations, 1960 (H.C. 282 of 1959–60).

Debate

On July 25, 1960, the House of Commons debated graduated contributions (627 H.C. Deb. 1221–1245).

Decisions of the Commissioner

Gainful occupation. A man claimed an increase of benefit for his wife for November 28 and 29, 1958. She normally worked a five-day week but, owing to short-time working, in her pay week ending Saturday, November 29, 1958, she had worked only on Tuesday, Wednesday and Thursday for which her earnings were approximately £4 10s. 0d. *Held,* that an employed person is engaged in a gainful occupation throughout any period in respect of which the contract of employment subsists. Accordingly the wife was engaged in a gainful occupation throughout the week, notwithstanding that she had not worked on every day, and as her earnings had exceeded 40s. in that week an increase of benefit was not payable. For both purposes it was appropriate to look at her employment pay week: Decision No. R(U) 4/60.

Gratuitous payment. An accountant was employed to make investigations required by the Yarn Spinners' Agreement and was said by his employer to be

entitled to a month's notice of termination. He was discharged without notice after the High Court had declared the Yarn Spinners' Agreement to be void by virtue of the Restrictive Trade Practices Act, 1956. On discharge he received a payment "in lieu of notice." *Held*, that, as a result of the High Court judgment, the object of the claimant's contract of service was frustrated and the contract was dissolved. The claimant therefore had no legal right to compensation. Applying Decision R(U) 37/53, the payment which he received was gratuitous and did not disentitle him to unemployment benefit: Decision No. R(U) 5/60.

Home confinement grant. Claimant to home confinement grant on her husband's insurance who had lived in the Republic of Ireland continuously since June, 1952, was confined on March 8, 1959. Her husband, who was also in the Republic, last left Great Britain on September 1, 1958. The Minister had decided under the provisions of the National Insurance and Industrial Injuries (Reciprocal Agreement with the Republic of Ireland) Order, 1953, that by March 8, 1959, the husband's absence from Great Britain had ceased to be temporary, and that his insurance under the Acts in force in Great Britain could not be extended to that date. *Held,* that as claimant's husband was not insured in Great Britain at the date of confinement, the Reciprocal Agreement Order did not assist her and she could not be treated as having been confined in Great Britain. There was no appeal to the Commissioner against decisions of the Minister: Decision No. R(G) 2/60.

Interruption of employment. The claimant was unemployed on Monday in one week and Tuesday in the next week. He worked on the intervening weekdays except the Saturday and Monday, which could not be treated as days of unemployment because they were days on which in the normal course he would not work. He contended that the latter two days should be excluded when counting "six consecutive days" for the purpose of deciding whether the Tuesday in the second week linked with the Monday in the first week as a period of interruption of employment. *Held,* that those days did not occur "within a period of six consecutive days." In computing that period only Sunday or another prescribed day can be disregarded: Decision No. R(U) 33/59.

Late claim. An ex-inspector of police called at the employment exchange seeking further employment on the day after his retirement following 38 years' service in the police force. He was not advised to sign the unemployed register or asked if he wanted to claim unemployment benefit. He did not claim benefit until nearly four months later, though he had paid further visits to the exchange about once a month seeking employment. He gave "ignorance" as the reason for delay in claiming. *Held*, that the claimant had shown good cause for the delay in making his claim. He had made inquiry, though not specifically about unemployment benefit, of someone competent to give him information and advice, and had been insufficiently advised: Decision No. R(U) 3/60.

Claimant declined a medical certificate and did not claim benefit at the onset of his incapacity because he expected to return to work within three days. On the third and last day of the prescribed time for claiming, he decided to claim but was prevented by his illness from so doing until the day on which he claimed. *Held,* that he showed good cause for the delay after the prescribed time for claiming and no disqualification was incurred: Decision No. R(S) 6/60.

Retirement. A school-teacher who was also an author had given up regular teaching 12 years ago because it appeared at that time that he could live on his books. He proposed to continue to do about 5 hours' teaching a week and to continue his work of writing books, placing no specific limit on the time he would devote to it. For the past 12 years he "had to write to live." His earnings as an author were between £600 and £900 a year. *Held*, that he had not retired from regular employment. It was clear that he did

not intend to engage in the occupation of author only occasionally or to an inconsiderable extent, and he could not be said to be engaged in it in circumstances not inconsistent with retirement: Decision No. R(P) 1/60.

Sickness benefit. A claim to sickness benefit was made by the wife of a student. His only known income was a post-graduate research grant of £300 per annum, which carried no provision for the maintenance of a wife. There was no evidence to show how the husband disposed of the £300. *Held,* that the claimant had not proved that she was unable to obtain any financial assistance from her husband. The Commissioner was not prepared to assume that the husband could not have spared at least £3 per annum for his wife: Decision No. R(S) 3/60.

A claimant submitted medical certificates certifying incapacity in respect of a period of 19 days commencing with the day after Good Friday. They showed that the diagnosis had changed radically from colitis to bronchial catarrh and back again, the change coinciding with a change in the certifying doctor. The claimant was seen by a visiting officer just after the beginning of the alleged incapacity and by an examining medical officer just before the end of it and to both officers he appeared to be a fit man. The claimant's record showed a high incidence of claims mainly for short periods, many of which overlapped holidays. In the last six years, periods of claim had included the Easter holiday. *Held,* that the claimant was not incapable of work; there was both direct and circumstantial evidence which cast doubt on the conclusions which would be drawn, prima facie from the medical certificates on which the claimant relied: Decision No. R.(S) 4/60.

A claimant had made many claims for sickness benefit, mostly for short periods. In the last 13 months the three spells for which he had claimed had each included a statutory holiday. Following disallowance of benefit for the third period the claimant's doctor furnished further details of the alleged incapacity. It appeared that periods of rest were advisable for the claimant's health. *Held,* that the claimant was incapable of work on the grounds of the further details supplied by the claimant's doctor, the statement by the claimant that he stayed in bed each day until mid-day to rest, and the absence of other medical evidence or evidence of a visiting officer to cast doubt on the diagnosis and opinion of the doctor: Decision No. R(S) 5/60.

Trade dispute. The claimant was a surface worker at a coal mine where some underground workers were in dispute about rates of pay for Sunday night work. In pursuance of that dispute there was some abstention from work by the Sunday night shift, as a result of which there was a loss of work and bonus by other workers, including surface workers. This was followed by a more general withdrawal of labour and a stoppage of work by reason of which the claimant lost employment. The surface workers did not participate in any dispute, and the question at issue was whether they were directly interested in the dispute which caused the stoppage. *Held,* that the claimant was not disqualified. Although the surface workers would be interested in any dispute as to the circumstances in which bonus should be withheld they could not be said to be directly interested in the "dispute which caused the stoppage of work." On the information furnished the dispute was identified as relating to rates of pay for Sunday night workers underground: the loss of bonus was no more than consequential upon that dispute. Circumstances distinguished from those dealt with in Decision R(U) 25/56, where the subject of the dispute was the conditions relating to bonus payments: Decision No. R(U) 30/59.

Widow's benefit. Claimant entered into an agreement with a company in which she owned shares and of which she had been managing director, whereby she was retained as a consultant, and was required to devote such time and attention to the business of the company as the directors considered desirable. In consideration, a salary of £350 per annum was to be paid so long as no dividend was paid on the ordinary shares. If a dividend was paid,

her salary was to be reduced by the amount due on her shares. No dividend had been paid since the agreement came into force. The claimant was an invalid and was not asked by the company to render any services. Her salary was returned for tax purposes as earned income. *Held*, that a person appointed as consultant to a company could not be said to have no occupation, nor could it be said that the claimant's remuneration was not derived from that occupation: Decision No. R(G) 1/60.

"Gainfully employed"

A person is "gainfully occupied in employment . . . being employment under a contract of service" within section 1 (2) (*a*) of the National Insurance Act, 1946, if he is serving under a contract of service and is rewarded for his services even though the contract does not provide for any reward.

An articled clerk entered the service of a solicitor without any thought of any reward, but the solicitor paid him £25 at Christmas and a further £100 by 4 equal instalments. The £100 was by agreement earmarked for a holiday and not to be used for ordinary living expenses. *Held*, that, during the period of the payments the clerk was an employed person within section 1 (2) (*a*) of the Act: BENJAMIN *v.* MINISTER OF PENSIONS AND NATIONAL INSURANCE [1960] 3 W.L.R. 431 ; [1960] 2 All E.R. 851, Salmon J. (applying principle of *Blakiston* v. *Cooper* [1909] A.C. 104).

Hospital In-Patients

The National Insurance (Hospital In-Patients) Amendment Regulations, 1960, substitute a single definition of "free in-patient treatment" for the existing definitions, in the National Insurance (Hospital In-Patients) Regulations, 1949, of "hospital or similar institution" and of "free in-patient treatment." The effect of the substitution is that the provisions for adjusting benefit will extend to patients maintained free in any hospital provided by the Minister of Health (including, as at present, any provided by him under the National Health Service or as successor to the former Minister of Pensions) or in Scotland by the Secretary of State, and to civilian patients maintained free in service hospitals.

The Regulations also make an additional provision for the adjustment of benefit which otherwise would be payable to or in respect of a hospital patient in certain cases where (as certified by a doctor who is treating the patient) either no sum, or no more than a weekly sum which is less than the amount of the weekly benefit otherwise payable, can be applied for the patient's personal comfort or enjoyment. The provision applies only where the patient has received free in-patient treatment for at least 52 weeks. In cases where the provision applies, the benefit which otherwise would be payable and cannot be applied for the patient's personal comfort or enjoyment is not payable immediately but will become payable (to the extent to which it would otherwise have been payable for not more than 52 weeks) to the patient in the event of his or her approved discharge from hospital.

The Regulations also confine the application of the existing provision for setting-off unpaid resettlement benefit accrued for one period of free in-patient treatment against resettlement benefit accrued for another to cases in which the interval between the two periods exceeds 28 days. The remaining provisions are of a minor or consequential character (S.I. 1960 No. 1283). The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations has also been published (H.C. 276 of 1959–60).

Modification of Superannuation Acts

The National Insurance (Modification of the Superannuation Acts) Regulations, 1960, have been made. The purpose of these Regulations is to modify the Superannuation Acts, 1834 to 1960, in connection with the operation of the provisions of the National Insurance Act, 1959.

By virtue of section 7 (2) of that Act, an employment may not be contracted out of the graduated National Insurance scheme unless those employed in it qualify for equivalent pension benefits. Section 8 (1) of the Act lays down the conditions which must be satisfied if an occupational pension scheme is to be treated as providing equivalent pension benefits. The purpose of Regulations 1 to 3 of these Regulations is to modify the Superannuation Acts so that the superannuation allowances payable to established civil servants will satisfy these conditions. Regulation 1 prevents the termination or suspension (except for prescribed causes) of so much of a superannuation allowance as is equivalent to the amount of graduated pension which would be payable if graduated contributions were paid at the maximum rate (*i.e.*, on earnings of £15 a week) throughout a like period of service. Regulations 2 and 3 prevent the surrender or commutation of a similar portion of a superannuation allowance. Regulation 4 provides for the reduction of the superannuation allowance payable during any period after age 65 (60 for women) to an established civil servant who is entitled to a graduated National Insurance pension, where any of the graduated pension is attributable to service in the Civil Service which is reckonable for determining the amount of his superannuation allowance. The amount of the reduction is equivalent to the amount of graduated pension attributable to such service, except in respect of service after age 65 (60 for women) where it may be less than the full equivalent (S.I. 1960 No. 1270).

Non-Participation

For new sets of Regulations, see S.I. 1960 Nos. 1103, 1104, 1154, 1210, 1695, 1725.

Report

A report by the Minister of Pensions and National Insurance on his Quinquennial Review of the Rates and Amounts of National Insurance benefit has been published (H.C. 227 of 1959–60).

Switzerland

The National Insurance (Switzerland) Order, 1960, gives effect in England, Wales and Scotland to the Supplementary Convention (set out in the Schedule), made between the Governments of the United Kingdom and Switzerland, in so far as it relates to the matters for which provision is made by the National Insurance Acts, 1946 to 1959 (S.I. 1960 No. 1064).

Widows' Benefit

The National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1960, amend the National Insurance (Pensions, Existing Contributors) (Transitional) Regulations, 1948. They provide for the taking into account, for the purposes of benefit under the National Insurance Act. 1946, of contributions under the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936 to 1941, for the 1947–48 contribution year, notwithstanding that they are paid after the contributor attained the age of 65 (if a man) or 60 (if a woman). (Since the 1946 Act came into force, payment of such contributions for any year before the 1947–48 contribution year has not been possible.) They provide also for the crediting, to a person who was insured under those Acts as a pensions voluntary contributor or as a special voluntary contributor on July 6, 1947, of contributions under the 1946 Act in respect of weeks ended on or before that date if he would have been insured under the said Acts on that date even if he had not become such a voluntary contributor (S.I. 1960 No. 1226).

NATIONAL INSURANCE (INDUSTRIAL INJURIES)

Benefits

The National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations, 1960, amend regulations 22, 24 and 25 of the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948, and extend the existing exceptions from the general disqualification for receiving benefit during periods of imprisonment or detention in legal custody imposed by section 32 (1) of the National Insurance (Industrial Injuries) Act, 1946, by providing that this disqualification shall not apply to a person detained in connection with criminal proceedings if at the conclusion of those proceedings no sentence or order entailing penal detention is imposed, or to a person who is liable to be detained in a hospital or similar institution as a person suffering from mental disorder unless he became so liable while undergoing penal detention and the period during which he would have been expected to have been undergoing such penal detention has not expired.

The provisions of the regulations relating to suspension of payment of benefit while undergoing imprisonment or detention in legal custody are also amended so as not to apply in the case of a beneficiary who, although detained in a hospital or similar institution, is excepted from disqualification.

Other amendments are of a minor or consequential character (S.I. 1960 No. 1284).

Decisions of the Commissioner

Act incidental to employment. Claimant as an applicant for evening employment attended an interview in the morning at the employers' office. After she had been engaged to start work that evening she was asked to sign a P.A.Y.E. income tax form which was required by the employers in connection with her pay. Whilst signing the form she injured her leg. *Held*, that the injury arose out of and in the course of her employment. When the accident occurred the contract of service had commenced and the claimant was doing something reasonably incidental to her employment. Principles underlying Decisions R(I)48/56 and R(I)53/54 applied: Decision No. R(I) 14/60.

Locality risk. An insurance agent, whilst walking from house to house collecting premiums, was hit and injured by a running dog. *Held*, that the risk of collision with a dog was one of the risks incidental to the streets. And, following *Dennis* v. *A. J. White and Co.* (10 B.W.C.C. 280), that if an employee, in the course of his employer's business, has to pass along the public street, whether on foot, on a bicycle, or in a vehicle, and sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment. Decisions R(I) 52/54 and R(I) 10/57 distinguished: Decision No. R(I) 13/60.

"*Out of and in the course of employment.*" Part-time relief insurance agent injured when travelling direct from her home to her collecting area. With the approval of her employers, she made up her cash at home; was paid travelling expenses from her home; had no fixed hours of work and had either to carry the money she collected to her home or deliver it at the end of the day to her employers or the agent for whom she was collecting. *Held* that, having regard to all these factors, the claimant, whilst travelling direct from her home for the purposes of her work, was in the course of her employment and the accident was an industrial accident. Decision R(I) 38/53 compared: Decision No. R(I) 15/60.

A cocoa-cake weigher fell from a ladder when retrieving a pair of his socks from an overhead steam pipe, where he had placed them to dry. *Held* that in the particular circumstances of this case it was reasonable for the claimant to wash and dry his socks at his place of work. In placing the socks in an inaccessible place when ample drying space at a reasonable level was

available he was, however, not doing negligently something which was part of his employment but was doing something which was not within the scope of his employment at all. Section 8 of the Industrial Injuries Act did not assist the claimant as it does not extend the scope of a claimant's employment. Claim disallowed: Decision No. R(I) 16/60.

Bus conductress came off duty from 7.15 p.m. to 8.10 p.m. and proceeded to a canteen provided by her employers for the exclusive use of their staff. At 8.5 p.m. she fell down some stairs when proceeding from the canteen to a toilet also provided by her employers. *Held*, that the claimant's act was reasonably incidental to the proper performance of her duty and she suffered injury by accident arising out of and in the course of her employment. Decisions R(I) 11/53 and C.I. 34/50 (K.L.) compared; R(I) 45/53 and R(I) 20/58 distinguished: Decision No. R(I) 17/60.

Personal injury. A miner, who strained himself while lifting a derailed coal hutch at work, suffered a coronary occlusion over twenty-four hours later. *Held*, that a "strain" does not amount to "injury" unless there is some significant physiological change for the worse which lasts for an appreciable time. As the claimant had failed to establish that the coronary occlusion was brought on by the "strain" at work he had not established that he had suffered "personal injury" by accident arising out of and in the course of his employment: Decision No. R(I) 19/60.

Special hardship allowance. Miner was suspended from employment in the coal mining industry in 1945 under the Workmen's Compensation Acts and received compensation for partial disablement on account of pneumoconiosis. He then worked in other occupations. From 1950 until January 6, 1954, he was unemployed and from January 7, 1954, he received sickness benefit for pneumoconiosis. In 1954 he applied to be re-employed in the coal mining industry and a medical board found him suitable for surface work. He continued to draw sickness benefit until June 25, 1956. After commuting his weekly payments of Workmen's Compensation he started work as a winding-engine cleaner at a colliery on June 26, 1956. He gave up work at the end of that day as his chest was too bad for him to do the work required. Sickness benefit was again paid from June 27, 1956. He was later awarded disablement benefit in respect of pneumoconiosis from September 17, 1958, and claimed special hardship allowance, contending that winding-engine cleaner was his regular occupation. *Held*, that special hardship allowance was not payable. The claimant had no regular occupation for the purpose of section 14 of the Act. He did not acquire a regular occupation by taking up the winding-engine cleaner employment on only one day. The job was beyond his power, and could not be regarded as his regular occupation notwithstanding a genuine wish to follow it. "Regular occupation" implies that the occupation is one which a man must have been able to carry on regularly: Decision No. R(I) 18/60.

Report

The Report by the Government Actuary on the 2nd Quinquennial Review of the National Insurance (Industrial Injuries) Acts, 1946 to 1959, has been published (H.C. 300 of 1959–60).

Nationalised Industries

Airways

Guarantees. Statements have been issued by the Treasury on loans proposed to be raised by B.E.A. (H.C. 295 of 1959–60) and B.O.A.C. (H.C. 296 of 1959–60).

Reports and accounts have been published for 1959–60 of B.O.A.C. (H.C. 266 of 1959–60) and B.E.A. (H.C. 267 of 1959–60).

Atomic Energy

Report. The 6th Annual Report of the United Kingdom Atomic Energy Authority, 1959–60, has been published (H.C. 243 of 1959–60).

Electricity

Guarantees. Statements have been issued by the Treasury on loans proposed to be raised by the Electricity Council (H.C. 297 of 1959–60), the North of Scotland Hydro-Electric Board (H.C. 288 of 1959–60) and the South of Scotland Electricity Board (H.C. 289 of 1959–60).

Report and accounts of the Area Boards, the Electricity Council and the Generating Board for 1959–60 have been published (H.C. 303–316 of 1959–60) with the report of the Minister of Power (H.C. 317 of 1959–60).

Gas

Guarantee. The Treasury has issued a statement of guarantee on loans proposed to be raised by the Gas Council (H.C. 298 of 1959–60).

Transport

Guarantee. The Treasury has issued a statement of guarantee on loans to be raised by the British Transport Commission (H.C. 299 of 1959–60).

Report. The report from the Select Committee on Nationalised Industries together with proceedings of the Committee, concerning British Railways, has been published (H.C. 254 of 1959–60).

Parliament

Election

It is for the court under section 16 (3) of the Representation of the People Act, 1949, to make up its mind on the evidence as a whole whether there was a substantial compliance with the law as to elections or whether an act or omission affected the result.

Sir Oswald Mosley brought a petition under Part III of the Representation of the People Act, 1949, for a scrutiny of the votes recorded as having been cast in the election for the North Division of the Parliamentary Borough of Kensington, and for a determination that the Member in fact elected was not duly elected, and that his election and return were void on the ground that in the holding of the election divers illegal practices and breaches of the statutory rules governing the conduct of the election were committed by the returning officer and/or his servants or agents. *Held*, dismissing the petition that, although certain breaches of the rules had been proved, there was no evidence that there had been a substantial breach, and that such breaches as there had been had not affected the result of the election: *Re* Kensington North Parliamentary Election [1960] 1 W.L.R. 762; [1960] 2 All E.R. 150, Election Court.

Estimates Committee (House of Commons)

Reports. The Select Committee has published its 4th Special Report (on the sale of military equipment abroad) (H.C. 250 of 1959–60); its 5th Special Report (on customs and excise) (H.C. 290 of 1959–60); its 6th Special Report (on medical services of the armed forces) (H.C. 291 of 1959–60); its 7th Special Report (on service estimates) (H.C. 292 of 1959–60); its 1st Report on Admiralty Headquarters Organisation, together with part of the Minutes of Evidence and Appendices (H.C. 249 of 1959–60), and its 4th Report on the Colonial Office, together with part of the Minutes of Evidence and an Appendix (H.C. 260 of 1959–60).

Members' Fund

The House of Commons (Members' Fund) Act, 1960 (8 & 9 Eliz. 2, c. 50) received the Royal Assent on July 29, 1960. It enables up to one-half of the fund to be invested in any investments the trustees think fit (s. 1); section 2 short title, etc.

This Act and the House of Commons Members' Fund Acts, 1939 to 1957 (2 & 3 Geo. 6, c. 49; 11 & 12 Geo. 6, c. 36; 5 & 6 Eliz. 2, c. 24), may be cited together as the House of Commons Members' Fund Acts, 1939 to 1960. The Act came into force on July 29, 1960.

Privilege

The Report has been published of the Committee of Privileges, together with the proceedings of the Committee, concerning the complaint of a letter to a member by Mr. Colin Jordan (H.C. 284, 284-I, of 1959–60). The matter was referred to the Committee by the House of Commons on July 12, 1960 (626 H.C. Deb. 1184–1194).

Procedure

House of Commons control of expenditure. On July 26, 1960, the Secretary of State for the Home Department made a statement concerning certain proposals which should be put into effect in the next Session for increasing the size of the Select Committee on Estimates from 36 to 43 members so that it may set up an additional sub-committee, and related matters (627 H.C. Deb. 1292–1302).

Public Accounts Committee (House of Commons)

Report. The Committee has published its 2nd Report (H.C. 256 of 1959–60).

Statutes

Royal Assent. The Corporate Bodies' Contracts Act, 1960 (see above, p. 400), the Offices Act, 1960 (see above, p. 400), the House of Commons Members' Fund Act, 1960 (see above, this page), the Caravan Sites and Control of Development Act, 1960 (see below, p. 416), the Cyprus Act, 1960 (see below, p. 423), and the Nigeria Independence Act, 1960 (see below, p. 426), received the Royal Assent on July 29, 1960.

Public Authorities

National Assistance Board

Report for 1959 has been published (Cmnd. 1085).

National Film Finance Corporation

Report and accounts for 1959–60 have been published (Cmnd. 1096).

New Towns

Reports have been published of the Cumbernauld, East Kilbride, and Glenrothes Development Corporations, 1959–60 (H.C. 268 of 1959–60).

Public Works Loan Board

Report for 1959–60 has been published (H.M.S.O. 63–36–0–60).

Sugar Board

Report and accounts for 1959–60 have been published (H.C. 285 of 1959–60).

White Fish Authority

Report and accounts for 1959–60 have been published (H.C. 235 of 1959–60).

REMEDIES

Certiorari

The Registrar of Building Societies ordered, pursuant to section 11 (1) of the Prevention of Fraud (Investments) Act, 1939, that no invitation to subscribe for or to acquire or to offer to acquire securities or to lend or deposit money should be made by or on behalf of the building society. The Divisional Court dismissed an application for certiorari. The building society appealed. *Held*, dismissing the appeal, that although the registrar was acting in a judicial or semi-judicial capacity the case was not one in which the court was obliged to exercise discretion to make an order of certiorari on the ground that the principles of natural justice had not been followed: R. *v.* REGISTRAR OF BUILDING SOCIETIES, *ex p.* A BUILDING SOCIETY [1960] 1 W.L.R. 669; [1960] 2 All E.R. 549, C.A.

Section 48 of the Licensing Act, 1953, provides: "(4) No justice shall act for any purpose under this Act in a case that concerns any premises in the profits of which he is interested. . . . (5) No act done by any justice disqualified by the section shall be invalid by reason only of that disqualification. . . ." An application by a co-operative society for a licence to sell spirits came first before seven magistrates, five of whom were members of the society. The spouses of the other two were members. The application was adjourned and was later granted by seven magistrates, of whom six were members of the society and the other the wife of a member. The chairman on both occasions had been a candidate for election to a directorship in the society. In an application to quash the licence on the ground of bias it was not contended that any magistrate was biased in fact or that the interest of any magistrate was so large as to create any risk of bias. *Held*, that the magistrates who were members of the society were disqualified from acting by section 48 (4), but unless it was shown that in addition to having an interest in the profits there was evidence of real bias, the granting of the licence was preserved from invalidity by virtue of section 48 (5): R. *v.* BARNSLEY LICENSING JUSTICES, *ex p.* BARNSLEY AND DISTRICT LICENSED VICTUALLERS' ASSOCIATION [1960] 3 W.L.R. 305; [1960] 2 All E.R. 703, C.A. (affirming decision of Divisional Court [1959] 2 Q.B. 276; applying *R.* v. *Tempest* (1902) 18 T.L.R. 433; considering *R.* v. *Rand* (1866) L.R. 1 Q.B. 230).

Per Lord Parker C.J.: There is a clear distinction between a tribunal that acts without jurisdiction and one which goes wrong in law while acting within its jurisdiction, *e.g.*, in acting on no evidence or on evidence which ought to have been rejected or in failing to take into consideration evidence which ought to have been considered. These are all matters of law, and unless the error appears on the record, no order for certiorari can be obtained. In its reasons for consenting to the operation of a notice to quit under section 25 (1) (*d*) of the Agricultural Holdings Act, 1948, an agricultural land tribunal referred to an admission in evidence by the tenant that he had negotiated with the landlord to surrender the land in dispute. The fact that the negotiations were without prejudice did not appear in the reasons given by the tribunal, but in an affidavit filed by the tenant. *Held*, refusing an application for certiorari, that the court was not entitled to look behind the reasons given by the tribunal, since there was no error of law on the face of the record. R. *v.* AGRICULTURAL LAND TRIBUNAL FOR THE SOUTH EASTERN AREA, *ex p.* BRACEY [1960] 1 W.L.R. 911; [1960] 2 All E.R. 518, D.C.

Injunction

Persistent flouting of the law constituted a serious injury to the public which might be restrained by an injunction. H. and his wife erected a stall on a footpath in Manchester and persisted in selling flowers from it despite 237 convictions under section 102 of the Manchester Police Regulation Act, 1844. The Attorney-General applied for an injunction, which was refused by Salmon J. The Court of Appeal, allowing the appeal, *held* (i) that H. and

the wife should be restrained from flouting the law by injunction where the statutory penalties were ineffective to secure their compliance; (ii) that it was in the public interest that H. and his wife should be restrained from flouting the law and that there were no exceptional circumstances in this case and an injunction would be granted: ATT.-GEN. *v.* HARRIS [1960] 3 W.L.R. 532; [1960] 3 All E.R. 207; C.A.; reversing the decision of Salmon J. [1959] 3 W.L.R. 205; applying *Att.-Gen.* v. *Sharp* [1931] 1 Ch. 121 and *Att.-Gen.* v. *Premier Line* [1932] 1 Ch. 303.

In ATT.-GEN. *v.* HARRIS (September 20, 1960) an injunction had been granted by the Court of Appeal perpetually restraining H. and his wife from placing or using any stall or other article on any footway in the City of Manchester and from exposing for sale on or near any such footway any flower or other article so as to obstruct or incommode the passage of such footway, contrary to section 102 of the Manchester Police Regulation Act, 1844. Thereafter H. and his wife brought their barrow with flowers and placed it in the lay-by of the road about one foot from the pavement. On a summons to commit H. and his wife to prison for contempt, H. said that he had taken the view that in selling flowers from his barrow on the roadway he had not been guilty of a breach of the injunction. Pennycuik J., declining to commit H. or his wife to prison, *held* that the right course was to adjourn the summons generally. [D.C.] See also *The Times*, September 21, 1960.

SUBORDINATE LEGISLATION

Parliamentary proceedings

Select Committee on Statutory Instruments (*House of Commons*). On June 28, July 12, 19 and 26, the Committee considered 44, 24, 6 and 13 instruments respectively and resolved that it was unnecessary to draw the special attention of the House to them. In their Third Report, the Committee drew the special attention of the House to the Import Duties (European Free Trade Association) Order, 1960, the National Insurance (Collection of Graduated Contributions) Regulations, 1960, and the Draft Monopolies and Restrictive Practices (Imported Hardwood and Softwood Timber) Order, 1960, on the ground that their purport called for elucidation.

In their Fourth Report, the Committee drew the special attention of the House to the Draft Cotton Finishing (Woven Cloth) Reorganisation Scheme (Confirmation) Order, 1960, and the Draft Cotton Finishing (Yarn Processing) Reorganisation Scheme (Confirmation) Order, 1960, on the ground that they appeared to make unexpected use of the Statute under which they were made. The Committee asked for memoranda from Government Departments in respect of three other instruments (H.C. 18-XIII, 18-XIV, 18-XV, 18-XVI of 1959–60).

Special Orders Committee (*House of Lords*). In the Tenth, Eleventh and Thirteenth Reports the Committee examined 14 instruments. The Committee found that one instrument raised important questions of policy and principle and required the special attention of the House, that three were not founded on precedent, but that no further special inquiries were necessary before the House decided whether to agree them. (H.L. (124) (138) (145).)

TOWN AND COUNTRY PLANNING

Accounts

Accounts have been published of the compensation and contributions paid under Parts II and IV of the Town and Country Planning Act, 1954, and the Town and Country Planning (Scotland) Act, 1954, and of certain sums received during the five years ended December 31, 1959 (H.C. 333 of 1959–60).

Building Preservation

The Town and Country Planning (Building Preservation Order) (Amendment)

Regulations, 1960, amend the Town and Country Planning (Building Preservation Order) Regulations, 1948, by removing the requirement to conform to a prescribed form of order (S.I. 1960 No. 1539).

Caravan Sites

Statute and Regulations. The Caravan Sites and Control of Development Act, 1960 (8 & 9 Eliz. 2, c. 62) received the Royal Assent on July 29, 1960.

The Act is in two main parts. Part III dealing with certain minor matters. Part I creates a new licensing system which will be operated by borough, urban and rural district councils, and will regulate the establishment and operation of caravan sites. Thus it will no longer be possible to establish a caravan site (subject to certain exceptions contained in Sched. I) without first obtaining a site licence, which may be subject to such conditions as the local authority consider necessary. Penalties, not exceeding £100 for a first offence and not exceeding £250 for a second or subsequent offence, are imposed for establishing sites without licences, and for failing to comply with the conditions attached to such licences. In order to obtain a site licence, however, the applicant must be entitled to the benefit of a planning permission to use the site as a caravan site, and such a permission must have been formally granted under Part III of the Town and Country Planning Act, 1947, that is, must not be one granted by a development order.

Part II of the Act amends the provisions of the Town and Country Planning Act, 1947, relating to the enforcement of planning control and is to be read as one with Part III of that Act. Challenge of an enforcement notice in the magistrates' court is now replaced by a right of appeal to the Minister on certain specific grounds. Provision is made for a further appeal to the High Court on a point of law from a decision of the Minister, and the Minister is empowered, at any stage of such an appeal, to state a case for the decision of the High Court. Fines are imposed for non-compliance with enforcement notices.

The Act came into operation on August 29, 1960. The Ministry of Housing and Local Government has issued a Circular concerning the general policy to be adopted by local authorities consequent on the Act and the more urgent action required to be taken (Circular No. 42/60).

The Caravan Sites (Licence Applications) Order, 1960, prescribes the form of particulars to be supplied in support of an application for a site licence under Part I of this Act (S.I. 1960 No. 1474).

The Town and Country Planning (General) (Amendment) Regulations, 1960, revoke regulations 6 and 7 of the Town and Country Planning (General) Regulations, 1948, the provisions of which are now superseded by the Third Schedule to the Caravan Sites and Control of Development Act, 1960. They also replace regulation 8 of those regulations by a new regulation, which reproduces the substance of the former regulation with the modification authorised by section 37 of the Act of 1960, enabling an owner to obtain under section 289 of the Public Health Act, 1936, as applied, rights against any other person interested in premises which are the subject of an enforcement notice or a notice under subsection (8) of section 30 or under section 33 of the Town and Country Planning Act, 1947 (S.I. 1960 No. 1475).

The Town and Country Planning General Development (Amendment No. 2) Order, 1960, amends the Town and Country Planning General Development Order, 1950. It removes use as a caravan site from the permissions granted by Article 3 and Classes IV and V of that order, and makes this use the subject of a new permission (Class XXIII) in cases where no site licence is required under the Caravan Sites and Control of Development Act, 1960. It also gives a permission (Class XXIV) for development required by the conditions of a site licence (S.I. 1960 No. 1476).

The Caravan Sites (Licence Applications) (Scotland) Order, 1960, prescribes the form of particulars to be supplied in support of an application for a site

licence under Part I of the Caravan Sites and Control of Development Act, 1960 (S.I. 1960 No. 1554).

The Town and Country Planning (General Development) (Scotland) Amendment Order, 1960, amends the Town and Country Planning (General Development) (Scotland) Order, 1950. It removes use as a caravan site from the permissions granted by Article 3 and Class IV of the First Schedule to that order, and makes this use the subject of a new permission (Class XXIII) in certain cases where no site licence is required under the Caravan Sites and Control of Development Act, 1960. It also gives a permission (Class XXIV) for development required by the conditions of a site licence. (Article 2.)

The order also amends the Town and Country Planning (General Development) (Scotland) Order, 1959, so as to eliminate the obligation to give public notice of an application for planning permission for a gymnasium or a swimming bath which is to form part of a school, college or university. (Article 3.) (S.I. 1960 No. 1722.)

Development Plans

The Ministry of Housing and Local Government has issued a Circular explaining that it would be best for review proposals submitted in future to provide for the extension of the plan to 1981. The Minister also asks that planning authorities should consider whether more land needs to be allocated for housing and other development (Circular No. 37/60).

Development Value

Assessment. Having regard to the terms of section 3 (4) of the Lands Tribunal Act, 1949, fresh evidence on values cannot be adduced on appeal from the Lands Tribunal.

On July 1, 1948, certain land was subject to requisition. On appeal from a determination of development value by the Central Land Board, the Lands Tribunal decided that regard must be had to the fact that the land was under requisition pursuant to sections 61 (5) and 89 (1) of the Town and Country Planning Act, 1947. The appellants were described in the title of the proceedings as the "Trustees of the Estate of J. W. Routh." On appeal to the Court of Appeal, the appellants sought to adduce further evidence as to value. *Held*, (1) that the land should be valued as though it had been on the appointed day in the state in which it was immediately before the period of requisition within section 89 (1); (2) that having regard to section 3 (4) of the Lands Tribunal Act, 1949, only questions of law could be raised on appeal and leave would not be granted to adduce fresh evidence.

Per curiam: The proceedings should not bear the title "Trustees of the Estate of . . ." since the trustees were not a body corporate: ROUTH TRUSTEES *v.* CENTRAL LAND BOARD; ROUTH *v.* CENTRAL LAND BOARD [1960] 1 W.L.R. 737; [1960] 2 All E.R. 436, C.A.

Enforcement Notice

Maintenance of waste land. Whether a piece of land is properly described as a "garden" or "vacant site" or "open land" for the purposes of section 33 (1) of the Town and Country Planning Act, 1947, is a question to be determined in the circumstances of each case, and the court whose duty it is to decide it must exercise its common sense on the matter.

S. owned land which, until 1955, he used as a sawmill. In 1955 the use of the sawmill was discontinued and S. let the land to a company who used the land for breaking up vehicles. In 1957 the local planning authority served a notice on S. purporting to be a notice under section 33 of the Act, requiring S. to remove all cars, car bodies and machinery "from the open land within the curtilage" of the premises. *Held*, that the notice was a nullity since the plot of land, although open and unbuilt on, was fenced and used for the business

of a car breaker's yard some part of which business was carried on within a building which this land surrounded; accordingly, in all the circumstances, the plot could not properly be described as "open land" for the purposes of section 33 (1): STEPHENS *v.* CUCKFIELD R.D.C. [1960] 3 W.L.R. 248; [1960] 2 All E.R. 716, C.A. (affirming decision of Lord Parker C.J.; [1956] P.L. 327).

Local Administration of Planning Acts

Debate. On July 18, 1960, the House of Lords debated this subject (225 H.L. Deb. 439–452).

"Person aggrieved"

In BUXTON *v.* MINISTER OF HOUSING AND LOCAL GOVERNMENT (July 28, 1960) Salmon J. *held* that a landowner, who sought to set aside a decision of the Minister of Housing whereby a neighbouring landowner was allowed to dig chalk on his land, was not a "person aggrieved" within section 31 (1) (*b*) of the Town and Country Planning Act, 1959, and so had no right to apply to the High Court for the Minister's order to be quashed. [D.C.] See also *The Times*, July 29, 1960.

Scotland

Grant Regulations. On July 5, 1960, in an oral answer, the Secretary of State for Scotland said he was sending that week to local authority associations, as a basis for consultations with them, proposals for the revision of the grant regulations under the Town and Country Planning (Scotland) Acts in the light of the provisions of the Local Government and Miscellaneous Financial Provisions (Scotland) Act, 1958 (626 H.C. Deb. 211).

Use Classes

M. Co. used a basement for storing, sorting, dispatching and repairing goods sold or used by them in their horticultural shop opposite the basement. Subsequently E. Co. used the basement as a workshop in connection with their business as printers' engravers. On a landlord's action for forfeiture for breach of a covenant restraining tenants from suffering any material change of use in the basement, *held*, (1) that the user of the basement by both M. and E. had been as an industrial building within article 2 (2) of the Town and Country Planning (Use Classes) Order, 1950, and that there had therefore not been a material change of use; (2) that the basement was not used as a "shop" within the meaning of article 2 (2); (3) that the basement was not used as a "repository" within the meaning of Class X of the schedule to the Order: HORWITZ *v.* ROWSON [1960] 1 W.L.R. 803; [1960] 2 All E.R. 881, Havers J.

TRIBUNALS AND JUDICIAL FUNCTIONS OF MINISTERS

Agricultural Land Tribunal

A landlord of agricultural land wished to subtract 54 acres from one of his farms, B farm, and add it to another of his farms. The Agricultural Land Tribunal refused consent to the operation of the landlord's notice to quit the 54 acres under section 25 (1) (*b*) of the Agricultural Holdings Act, 1948, basing its refusal on the finding that the tenant of B farm had brought B farm to a high state of productivity and that to take away from him the 54 acres might adversely affect his farming and the state of productivity. *Held*, remitting the case to the tribunal, that the tribunal, in refusing its consent under section 25 (1) (*b*), ought to have considered the effect of the proposed transfer not merely on the B farm, but upon the whole of the landlord's estate; but that the tribunal might nevertheless consider it right to withhold its consent under the proviso of section 25 (1) of the Act: EVANS *v.* ROPER [1960] 1 W.L.R. 814; [1960] 2 All E.R. 507, D.C.

Air Transport Licensing Board

The Tribunals and Inquiries (Air Transport Licensing Board) Order, 1960, brings the Air Transport Licensing Board under the supervision of the Council on Tribunals (S.I. 1960 No. 1335).

Disciplinary Bodies

Bar Council. Communications to the Bar Council are covered by qualified, but not absolute privilege.

The defendant sent two letters to the Secretary of the General Council of the Bar alleging professional misconduct against the plaintiff, who was Queen's Counsel. In an action for libel the defendant contended that the letters were protected by absolute privilege. *Held*, that the letters were the subject of qualified and not absolute privilege, since the Bar Council had no judicial or quasi-judicial function; LINCOLN *v.* DANIELS [1960] 1 W.L.R. 852; [1960] 3 All E.R. 205, Salmon J.

General Medical Council. In considering an appeal from the General Medical Council under section 36 of the Medical Act, 1956, the Privy Council drew an analogy with an appeal to the Court of Appeal from a judge sitting alone and one from the General Medical Council where the decision had been arrived at at a hearing before a body of persons. They considered that the validity of any determination by a committee such as the General Medical Council was, certainly, dependent on the performance of its statutory duty, under section 33 (1) (*b*) of the 1956 Act, to hold a "due inquiry" into the matter but *held* that it would be an undue limitation of their duty and powers in dealing with a statutory appeal to require no more for the upholding of a determination than observance of what are known as "the rules of natural justice": see FOX *v.* GENERAL MEDICAL COUNCIL [1960] 1 W.L.R. 1017; [1960] 3 All E.R. 222.

General Optical Council. The Judicial Committee (Opticians Rules) Order, 1960, made under the Opticians Act, 1958, enacts Rules to provide for an appeal to Her Majesty in Council by an individual or a body corporate whose name has been erased from the register or list of opticians (S.I. 1960 No. 1661).

Law Society. The fact that the disciplinary committee set up under the Solicitors Act, 1957, is directed by its rules to sit in private and only give its finding and order publicly does not destroy the right to claim absolute privilege.

The plaintiff sued the members of the disciplinary committee for libels contained in their findings and orders in a disciplinary matter considered by them which they had published. *Held*, that the publication was absolutely privileged: ADDIS *v.* CROCKER [1960] 3 W.L.R. 339; [1960] 2 All E.R. 629, C.A. (affirming decision of Gorman J.; applying principles stated by Lord Esher M.R. in *Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson* [1892] 1 Q.B. 431, 442; considering *Barratt* v. *Kearns* [1905] 1 K.B. 504).

Finance Act Tribunal

The Tribunals and Inquiries (Finance Act Tribunal) Order, 1960, brings under the supervision of the Council on Tribunals the tribunal constituted for the purposes of section 28 of the Finance Act, 1960 (S.I. 1960 No. 1668).

Mental Health Review Tribunals

The Mental Health Review Tribunal Rules, 1960, prescribe the procedure to be followed in proceedings before the Mental Health Review Tribunals. Unless a formal hearing of an application is requested, a tribunal may determine an application in whatever manner they consider appropriate (rule 17). Rule 4 defines the circumstances in which the tribunal may postpone the consideration of an application, the general effect of this rule being that the tribunal is not obliged to consider an application in respect of the same patient more

often than once every twelve months unless the application is made on one of the occasions mentioned in paragraph (2) of rule 4. Members of the Mental Health Review Tribunals may be disqualified from considering applications in certain circumstances (rule 8 (2)).

Rule 5 requires a copy of every application to be sent to the responsible authority defined in rule 2, who must supply the tribunal with full information about the patient. A copy of the authority's statement (excluding any part of it which the responsible authority consider should, in the patient's interests, be withheld from the applicant) must be sent to the applicant by the tribunal. Rule 7 defines the other persons besides the responsible authority to whom notice of the application must be given. Rule 11 provides for the patient's being examined by a medical member of the tribunal, while under rule 12 the tribunal may themselves interview the patient and must do so if he asks for an interview. Rule 13 requires the tribunal to determine whether any part of the information supplied by the responsible authority which has not been disclosed to the applicant ought to continue to be withheld from him.

Part IV deals with cases in which a formal hearing of an application has not been requested and provides that references by the Minister and the Secretary of State are to be disposed of without a formal hearing.

Part V prescribes the procedure where a formal hearing has been requested. Not less than seven days' notice of the hearing must be given and anyone who has received notice of the application will have an opportunity of being heard by the tribunal (rule 22). Where the patient is the applicant and has asked for a formal hearing but the tribunal are satisfied that such a hearing would be detrimental to the patient's health, the application will be determined informally (rule 23). The tribunal will sit in private unless the applicant has asked for a public hearing, in which case the tribunal must be satisfied that this would not be detrimental to the patient's interests and would not for any other reason be undesirable; except in so far as the tribunal may direct, the names of persons concerned in the proceedings are not to be made public (rule 24).

Rule 27 provides for notification of the tribunal's decision on an application to all persons concerned (including the patient where he is not himself the applicant) and gives the applicant and the responsible authority the right to request the giving of reasons (S.I. 1960 No. 1139).

The Mental Health Act, 1959 (Commencement No. 2) Order, 1960, brings into operation certain provisions of the Mental Health Act, 1959, *inter alia*, those which provide for the setting up of Mental Health Review Tribunals, and define and classify the various forms of mental disorder, and those which deal with the powers of local health authorities to provide services for the care and after-care of mentally disordered persons and the powers of welfare authorities and children authorities to provide accommodation and other services for such persons (S.I. 1960 No. 1159).

National Service

In *Ex p.* WOODHOUSE (June 17, 1960) the Appellate Tribunal (Division for England and Wales), established under the National Service Act, 1948, gave the following reasons for dismissing an appeal: "The Local Tribunal decided that appellant had not established a conscientious objection to military service. The Appellate Tribunal think they were right in reaching that decision and the appeal is therefore dismissed." The Divisional Court (Lord Parker C.J., Hilbery and Donovan JJ.) *refused leave to move* for an order of mandamus directed to the Appellate Tribunal to furnish a statement pursuant to section 12 of the Tribunals and Inquiries Act, 1958, of the reasons for its decision. [D.C.] See also *The Times*, June 18, 1960.

Wales

Broadcasting Council

On July 19, 1960, a resolution condemning the Government's appointment of the Chairman of the Broadcasting Council for Wales was defeated in the House of Commons (627 H.C. Deb. 339–372).

Hospital Service

On July 19, 1960, the House of Commons debated the Hospital Service in Wales and resolved to take note of the Report on Developments and Government Action in Wales and Monmouthshire for 1959 (Cmnd. 961) (627 H.C. Deb. 263–339).

Wireless and Television

Committee of Inquiry

The appointment of a committee of inquiry into the future of sound and television broadcasting was announced in the House of Commons by the Postmaster-General on July 13, 1960. Technical matters as well as matters of principle come within the scope of the committee's terms of reference, which are:

> "To consider the future of the broadcasting services in the United Kingdom, and the dissemination by wire of broadcasting and other programmes, and the possibility of television for public showing; to advise on the services which should in future be provided in the United Kingdom by the BBC and the ITA; to recommend whether additional services should be provided by any other organisation; and to propose what financial and other conditions should apply to the conduct of all these services."

The committee will also be asked to consider the technical recommendations made in the recent report of the Television Advisory Committee, among them proposals concerning what system of colour television should be adopted and whether to change the present picture definition from 405 to 625 lines. Sir Harry Pilkington, the industrialist, who was recently the chairman of the Royal Commission on Doctors' and Dentists' Pay, will be chairman of the committee.

In answer to questions, the Postmaster-General stressed that the committee's terms of reference ensured the continued existence of both the BBC and the ITA but were "sufficiently wide to allow the committee to consider whether any third or other organisation should be brought into existence." Participation in Eurovision and possible future developments in international and inter-Commonwealth television would also be within the committee's competence. The only subject outside the terms of reference was the external services of the BBC.

At the same time the Postmaster-General announced that the Government had decided that the BBC's charter and licence should be extended from June 30, 1962, to July 29, 1964, the expiry date of the Television Act (Commonwealth Survey, C.O.I., July 19, 1960). (See also 626 H.C. Deb. 1402–1406; 627 H.C. Deb. 480–483; 225 H.L. Deb. 226–231.)

See also Wales (above, this page).

COMMONWEALTH AND DEPENDENT TERRITORIES

General

Colonial Development

A Return has been published of Schemes made and of Loans approved under the Colonial Development and Welfare Act, 1959–60 (H.C. 244 of 1959–60).

Colonial Development Corporation

On July 7, 1960, the House of Commons debated the Colonial Development Corporation's annual report and accounts, 1959 (H.C. 211 of 1959–60), in Committee of Supply (626 H.C. Deb. 773–830). On July 20, 1960, the House of Lords debated the same subject (225 H.L. Deb. 516–575).

Commonwealth Prime Ministers' Conference

On July 4, 1960, the House of Commons debated the Commonwealth Prime Ministers' Conference (626 H.C. Deb. 38–167). On July 6, 1960, the House of Lords also debated this subject (224 H.L. Deb. 1130–1234).

ANTIGUA

Colonial Report

The report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–11–58).

BECHUANALAND

Constitutional Developments

On July 28, 1960, the Minister of State for Commonwealth Relations stated in an oral answer in the House of Commons that Legislative and Executive Councils will be established in the Protectorate. The Legislative Council will have an elected unofficial majority with equal numbers of European and African unofficial members and one elected Asian member. The Executive Council will have an official majority, and also with equal numbers of European and African unofficial members (627 H.C. Deb. 1838–1839).

A similar statement was made by the Secretary of State for Foreign Affairs in the House of Lords (225 H.L. Deb. 901–902).

BRITISH SOLOMON ISLANDS

Colonial Report

The report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–39–58).

Constitution

The British Solomon Islands (Constitution) Order in Council establishes an Executive Council for the British Solomon Islands Protectorate and provides for consultation by the High Commissioner of the Western Pacific with the Executive Council. The Order also establishes a Legislative Council for the Protectorate and provides for the enactment of laws for the Protectorate (S.I. 1960 No. 1367).

Royal Instructions

Instructions, dated August 3, 1960, issued to the High Commissioner for the Western Pacific, make new provisions for the government of the British Solomon Islands Protectorate.

CAMEROONS

Constitution

The Southern Cameroons (Constitution) Order in Council, 1960, makes provision for the administration of the United Nations Trust Territory of the Southern Cameroons under British Administration after its separation from Nigeria (S.I. 1960 No. 1654).

The Southern Cameroons Plebiscite Order in Council, 1960, makes provision for the holding of a plebiscite in the Southern Cameroons for the purpose of ascertaining whether the people of the Southern Cameroons would prefer,

upon the relinquishment by Her Majesty's Government in the United Kingdom of their responsibility for the government of the Southern Cameroons, that the Southern Cameroons should achieve independence by joining the independent Federation of Nigeria or by joining the independent Republic of the Cameroons (S.I. 1960 No. 1655).

The Northern Cameroons (Administration) Order in Council, 1960, makes provision for the administration of the United Nations Trust Territory of the Northern Cameroons under British Administration after its separation from Nigeria (S.I. 1960 No. 1656).

The Northern Cameroons Plebiscite Order in Council, 1960, makes provision for the holding of a plebiscite in the Northern Cameroons for the purpose of ascertaining whether the people of the Northern Cameroons would prefer, upon the relinquishment by Her Majesty's Government in the United Kingdom of their responsibility for the government of the Northern Cameroons, that the Northern Cameroons should achieve independence by joining the independent Federation of Nigeria or by joining the independent Republic of the Cameroons (S.I. 1960 No. 1657).

Cyprus

Constitution

The Cyprus Act, 1960 (8 & 9 Eliz. 2, c. 52), received the Royal Assent on July 29, 1960.

This Act provides for the establishment of an independent republic in Cyprus.

Section 1 provides for the establishment by Order in Council on a day to be appointed of the Republic of Cyprus as an independent sovereign country; section 2 makes provision for the Sovereign Base Areas to remain under the sovereignty of Her Majesty; section 3 and the Schedule provide for the continued operation of existing laws subject to certain modifications; section 4 provides for future changes in the relationship between the Commonwealth Acts, 1948 and 1958 (11 & 12 Geo. 6, c. 56; 6 & 7 Eliz. 2, c. 10); section 5 abolishes appeals to the Privy Council from the appointed day; section 6 provides for future changes in the relationship between the Commonwealth and the new republic; section 7, short title, etc. The Act came into force on July 29, 1960.

The Republic of Cyprus Order in Council, 1960, designated the Constitution of the Republic and appointed August 16, 1960, as the day on which the Constitution came into force (S.I. 1960 No. 1368).

A White Paper was published on July 10, 1960, containing the treaties and other documents formally agreed in Nicosia (Cmnd. 1093).

The Sovereign Bases Areas of Akrotiri and Dhekelia Order in Council, 1960, makes provision for the government of the Sovereign Base Areas of Akrotiri and Dhekelia (S.I. 1960 No. 1369).

Royal Instructions

Instructions, dated August 3, 1960, issued to the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia, make further provision for the government of these Areas.

Dominica

Colonial Report

The Report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–51–58).

Fiji

Additional Instructions

Additional Instructions, dated May 11, 1960, issued to the Governor of Fiji, amend the Royal Instructions issued to the Governor of Fiji in 1929.

Colonial Report

The Report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–15–58).

Self-Government

On July 5, 1960, in a written answer, the Secretary of State for the Colonies stated that proposals for the election of Fijian representatives will be debated in the legislature in September or October.

Ghana

A Republic

On July 1, 1960, Ghana was proclaimed a Republic, and Dr. Nkrumah was inaugurated as President. Official ceremonies started on June 29 with a state dinner for the last Governor-General, Lord Listowel, who, on the following day, prorogued Parliament and left for the United Kingdom. On July 4, Dr. Nkrumah opened the new Parliament. Ghana remains a member of the Commonwealth.

To mark the inauguration of the Republic, messages of goodwill were sent to Dr. Nkrumah by the Queen and by the United Kingdom Prime Minister. Both stressed the ties of friendship between the United Kingdom and Ghana and expressed satisfaction that the two countries would continue to be associated as members of the Commonwealth.

The Queen's message was as follows:

> "On the occasion of the inauguration of the Republic of Ghana, I send you my warmest good wishes. I have followed with deep interest the progress of your country and its considerable achievements since the attainment of independence in 1957. I hope that peace and prosperity may continue to reward you and your countrymen in the years ahead.
>
> "It is a source of satisfaction to me to know that your country intends to remain within the Commonwealth and I am confident that the ties of friendship and mutual understanding between our peoples will be maintained and strengthened. I look forward with great pleasure to the visit which I hope to pay to Ghana in 1961."

Dr. Nkrumah, in his reply, declared that the Queen, as head of the Commonwealth, could "always be assured of our desire to maintain and strengthen the close ties of friendship" that existed between the people of the United Kingdom and Ghana, and added: "We look forward with pleasure to your visit here in 1961." (Commonwealth Survey, C.O.I., July 19, 1960.)

Gibraltar

Supreme Court

The Gibraltar (Application of Law and Supreme Court Consolidation) Revocation Order, 1960, dated August 3, 1960, revokes earlier Orders in Council concerning the Supreme Court.

Hong Kong

Colonial Report

The Report for 1959 has been published by the Colonial Office (H.M.S.O. 58–1–21–59).

Letters Patent

The Hong Kong Letters Patent, 1960, dated June 23, 1960, came into operation upon the date of their publication in the *Hong Kong Gazette*. It amends provisions in the Hong Kong Letters Patent, 1917, as amended, relating to the disposal of lands.

Kenya

Legislature

The Kenya (Electoral Provisions) Order in Council, 1960, enables the legislature of Kenya by law and the Governor of Kenya by regulations to make provision for the election of certain members to a new Legislative Council which it is proposed should hereafter be established for Kenya, and enables registration of electors in pursuance of any such provision to take place. It also extends the maximum term of the existing Legislative Council by one year (S.I. 1960 No. 1276).

Political Future

The Governor of Kenya, in a broadcast to the people on August 31, almost exactly a year after his appointment, outlined the United Kingdom Government's intentions for Kenya's political future and gave a warning that there could be no short cuts to independence. He and his officials, he said, intended to make the Lancaster House constitution work, and would not deviate from that agreement until they were satisfied that it was working smoothly. They would then put all their efforts into helping forward the country's political development through the stages which still remained before full independence. The Governor stressed the need for building a stable nation in Kenya, in which each community would have equal rights and opportunities, and he spoke of the importance of ensuring that material progress kept pace with political progress. He believed that if independence was to be linked with prosperity, and not with misery, there were no short cuts. The eagerness of politicians to find short cuts was, he said, understandable, but there was a real danger that it might destroy the goodwill essential for progress. According to reports from Kenya, the Governor's speech was welcomed by most political groups in the territory, but was strongly criticised by the Kenya African National Union (KANU), whose general secretary, Mr. Mboya, described it as "ill-conceived, uncalled for and dangerous." The following are extracts from the Governor's broadcast:

> "I and my officials intend, as a first and foremost step, to put our whole hearts and determination into making the Lancaster House constitution work. We shall not be distracted from this by threats on the one hand or blandishments on the other. We do not intend to deviate in letter or in spirit from that agreement, until enough people representing all the communities in Kenya are agreed that, in keeping with performance, the natural time has come to change it. I am sure it provides the right way to help the Africans and all the other peoples of Kenya to reach early nationhood with reasonable happiness and fair chances of improved living standards; not for one or two tribes or races, but for everyone. My immediate plans, then, are as simple as that: as a start, to make the Lancaster House Constitution work. As soon as I am satisfied that it is working smoothly, we shall put all our efforts into helping forward the country's leaders, in the shortest possible time compatible with the people's safety, to the ensuing separate stage of responsible government and then internal self-government. And after that, when all are ready, to the final stage of full independence." (Commonwealth Survey, C.O.I., September 27, 1960.)

Malta

Constitutional Commission

A Constitutional Commission consisting of Sir Hilary Blood, as Chairman, and Sir Alfred Roberts and Mr. Edward St. John, has been appointed to formulate constitutional proposals for Malta.

The terms of reference of the Commission are as follows: "In the light of the expressed desire of Her Majesty's Government to restore representative Government in Malta, to formulate detailed proposals, after consultation

with representatives of the Maltese people and interests, of the most appropriate means of implementing the statement regarding constitutional changes in Malta, made by the Secretary of State for the Colonies in the House of Commons on July 27, 1960." The Commission propose to leave for Malta in early October for the purpose of acquainting themselves with local conditions at first hand and to take evidence.

(See also 627 H.C. Deb. 1648–1653; 225 H.L. Deb. 816–820; 225 H.L. Deb 983–984.)

Monserrat

Colonial Report

The Report for 1957 and 1958 has been published by the Colonial Office (H.M.S.O. 58–1–23–58).

Nigeria

Independence

The Nigeria Independence Act, 1960 (8 & 9 Eliz. 2, c. 55), received the Royal Assent on July 29, 1960. This Act provides for the attainment by Nigeria of fully responsible status within the Commonwealth.

As from October 1, 1960, the colony and protectorate of Nigeria together acquire fully responsible status under the name of Nigeria (section 1); section 2 modifies the British Nationality Acts, 1948 and 1958 (11 & 12 Geo. 6, c. 56; 6 & 7 Eliz. 2, c. 10); section 3 (1) makes modifications with regard to the Interpretation Act, 1889 (52 & 53 Vict., c. 63), the Army Act, 1955 (3 & 4 Eliz. 2, c. 18), the Air Force Act, 1955 (3 & 4 Eliz. 2, c. 19), and the Naval Discipline Act, 1957 (5 & 6 Eliz. 2, c. 53); section 3 (4) and Schedule II make modifications in other enactments relating to diplomatic immunities, finance, visiting forces, ships and aircraft, copyright, divorce and the Commonwealth Institute; section 4 modifies the Overseas Service Act, 1958 (6 & 7 Eliz. 2, c. 14); section 5, short title, etc. The Act takes effect from October 1, 1960.

The Nigeria (Constitution) (Amendment No. 2) Order in Council, 1960, amends the provisions of the Nigeria (Constitution) Order in Council, 1954, as amended, relating to the composition of the Western House of Chiefs and the Northern House of Assembly (S.I. 1960 No. 1290).

The Nigeria (Constitution) Order in Council, 1960, has been made. By virtue of the provisions of the Nigeria Independence Act, 1960, Nigeria will attain fully responsible status within the Commonwealth on October 1, 1960. This Order makes fresh constitutional provision for Nigeria as a Federation consisting of the three Regions and a Federal territory with effect from that date (S.I. 1960 No. 1652).

The Nigeria (Retirement Benefits) Order in Council, 1960, makes provision for special retirement benefits for officers in the public services of the Federation of Nigeria, Northern Nigeria, Western Nigeria and Eastern Nigeria. It replaces, and revokes, the Nigeria (Retirement Benefits) Order in Council, 1958, and the Nigeria (Retirement Benefits) (Amendment) Order in Council, 1960 (S.I. 1960 No. 1653).

Membership of the Commonwealth

On September 23 the Commonwealth Relations Office announced that the following telegrams had been exchanged between the Prime Ministers of the United Kingdom and the Federation of Nigeria:

Mr. Macmillan to Alhaji Sir Abubakar:

> "At their meeting in London in May this year, the Commonwealth Prime Ministers extended to the Federation of Nigeria their warm wishes for its future, and looked forward to being able to welcome an independent Nigeria as a member of the Commonwealth on the completion of the necessary constitutional processes.

"As you know, the final stage of Nigeria's progress towards Independence was reached with the giving of the Royal Assent to the Nigeria Independence Bill, and the effect of this Assent is that as from October 1, Nigeria becomes a fully independent Sovereign State.

"It is with pleasure that I can tell you, after consultation with the other Commonwealth Prime Ministers, that they have all agreed that Nigeria shall as from October 1 be recognised as a Member of the Commonwealth."

Alhaji Sir Abubakar to Mr. Macmillan:

"Thank you for your kind message. I need not tell you how pleased we in Nigeria are to be received into the fellowship of the Commonwealth. We are indeed most grateful to you and to your fellow Prime Ministers in the Commonwealth and we deeply appreciate the cordial manner in which Nigeria has been accepted as a member. We pledge ourselves to maintain the high standards which have caused the Commonwealth to have such a beneficent influence in these difficult times."

The United Kingdom delegation to the Nigerian independence celebrations left London for Lagos on September 26. It was headed by Lord Kilmuir, the Lord Chancellor, and included Lord Perth, the Minister of State for Colonial Affairs, Mr. C. J. M. Alport, the Minister of State for Commonwealth Relations, and Lord Head, the first United Kingdom High Commissioner to the Federation of Nigeria.

Her Majesty the Queen was represented at the celebrations by Her Royal Highness the Princess Alexandra (Commonwealth Survey, C.O.I., September 27, 1960).

North Borneo

Legislative Council

The North Borneo (Legislative Council) (Amendment) Order in Council, 1960, amends certain provisions of the North Borneo (Legislative Council) Order in Council, 1950, relating to the composition of the Legislative Council, and adds a section relating to the Governor's reserved legislative power (S.I. 1960 No. 1372).

Royal Instructions

The North Borneo Royal Instructions, 1960, dated August 3, 1960, amend the North Borneo Royal Instructions, 1960, relating to the Executive Council.

Rhodesia and Nyasaland

Federal Constitution

On July 28, 1960, the Minister of State for the Colonies, in an oral answer, stated that the delegations to the Federal Constitutional Review Conference will be chosen by the respective governments.

Northern Rhodesia

On September 28, 1960, the Secretary of State for the Colonies agreed to a proposal of the Governor of Northern Rhodesia that the Governor should invite leaders of political parties to take part in informal talks in the territory, in order to prepare the ground for a formal conference at the earliest practicable date to consider constitutional advance for Northern Rhodesia. This formal conference could not be convened before the Federal Review Conference is planned to meet; but it will be held concurrently with the Review if that is found practicable and convenient to those concerned.

Nyasaland

The Nyasaland Constitutional Conference was held in London from July 25 to August 4. Its report, published as a United Kingdom White Paper (Cmnd. 1132), is summarised in the paragraphs which follow. Mr. Macleod, the United Kingdom Secretary of State for the Colonies, presided at most of the meetings.

The purpose of the conference was to advise the Secretary of State on the nature of the next stage of constitutional advance in Nyasaland; questions affecting Nyasaland's relationship with the Federation of Rhodesia and Nyasaland were outside its scope. In his opening statement to the conference the Secretary of State said that its task was to seek a pattern for the orderly evolution of Nyasaland's political institutions on a democratic basis, in a form which would meet the aspirations and apprehensions of the peoples of Nyasaland; which would provide for the continuance of stable government and progressive administration, and which would enable the United Kingdom Government to discharge their protective responsibilities towards Nyasaland for as long as all its peoples so desired.

After studying the views put forward in the opening sessions of the conference, the Secretary of State said that, having regard to the constitutional stage which Nyasaland had reached, and taking into account also the present social and economic conditions in the Protectorate as well as the political aspirations of its people for the future, he considered that the conference should base its deliberations on the following main principles:

1. The composition of the legislature should have regard to the fact that there is an African majority in the country, whilst providing for the vital contribution which the non-African communities make to the country's progress and prosperity.
2. African representation in the legislature should be obtained by direct elections, based on a reasonable and broad franchise suited to the present conditions of the country.
3. The Executive Council should not yet become responsible to the legislature but should remain advisory to the Governor.
4. The Governor's unofficial advisers on the Executive Council should be directly associated with the day-to-day administration of the Government, possibly on the basis of a ministerial system.

After further discussion the conference decided to make the following recommendations:

The Executive Council

1. There should be an Executive Council of ten members presided over by the Governor. The Council should be advisory to the Governor.
2. Of the ten members, five should be unofficials—three chosen from among the members of the Legislative Council elected on the lower of the two proposed electoral rolls, and two chosen from among those elected on the higher electoral roll. In making these appointments to the council, the Governor should have regard to the composition of parties in the Legislative Council, and should make his selection after consultation with the leader or leaders of the main party or parties in that council.
3. The Chief Secretary, the Attorney-General, and the financial secretary should be *ex officio* members of the council; and in addition there should be two nominated official members.
4. All appointments in the council should carry ministerial status, with defined departmental responsibilities, although at the Governor's discretion one or more of the unofficial ministers might be nominated as Ministers without Portfolio.

5. The Governor should also have power to appoint up to three parliamentary secretaries, who should not be members of Executive Council, but should be associated with the administration of departments. These should also be selected from among the elected members of the Legislative Council, at least two of them from members elected on the lower electoral roll.

The Legislative Council

1. There should be a Legislative Council consisting of twenty-eight elected unofficial members, and the three *ex officio* and two nominated official members of the Executive Council.
2. Of the twenty-eight unofficial members, twenty should be elected in one set of constituencies by voters who satisfy lower qualifications and eight in another set of constituencies by voters who satisfy higher qualifications.
3. It should be understood that the unofficial members of the Legislative Council appointed to the Executive Council would "cross the floor" to the Government side, as also would any unofficials appointed as Parliamentary Secretaries.
4. The Governor should have a general power to add to the council such number of nominated members as Her Majesty might by instructions through the Secretary of State from time to time direct. This power should be held in reserve, and should not be exercised unless it should become necessary in the interests of good government to appoint additional members to the Government side of the council, and then only to the extent necessary to give the combined members of Executive Council a majority over the remaining unofficial members.

The Franchise

1. There should be two electoral rolls.
2. The following general qualifications should be common to both rolls: (*a*) Nationality as a British subject or British protected person belonging to Nyasaland. (*b*) Residence in the Protectorate for two years prior to registration. (*c*) Age 21 years or over.
3. One of the following additional qualifications should be required of persons registering as voters in the constituencies under the lower franchise: (*a*) Income of £120 per annum (or ownership of immovable property valued at not less than £250), with literacy in English; or (*b*) Persons on the tax register who have met their tax obligations for the past ten years and who are literate in English or any language or dialect commonly used in Nyasaland; or (*c*) Holders of scheduled posts, *i.e.*, chiefs, native authority members, past and present members of District Councils, and group or village headmen; or (*d*) Master farmers; or (*e*) Pensioners; or (*f*) Ex-Servicemen.
4. The monetary and educational qualifications for persons registering in the constituencies under the higher franchise should be based on the equivalent provisions in the current Northern Rhodesian qualifications for ordinary voters.
5. The question to what extent women might appropriately be enfranchised, on either roll, either in their own right or as wives of husbands who themselves qualify for the vote, should be remitted for consideration to the Working Party which should be set up in Nyasaland to work out the detailed implementation of the recommendations of the conference (see below). In doing this, the working party should have regard to the principle followed generally by the conference of enfranchising at this stage categories of people who, in the conditions of Nyasaland today measure up to reasonable standards of responsibility and experience.

In addition, the conference discussed matters relating to the judiciary, to fundamental rights, the Civil Service, local government and the position of chiefs. The following paragraph of the conference report records what was decided regarding the implementation of the conference's recommendations:

> "It is recommended that an immediate start should be made on the detailed work required to implement the conclusions of the conference, with a view to holding elections under the new constitution as soon as administratively possible. In particular the Governor should be invited to appoint a working party to draw up detailed recommendations for such matters as the definition of the franchise qualifications, the registration of voters, the qualifications and nomination of candidates, the delimitation of constituencies, and other matters preparatory to the holding of elections." (Commonwealth Survey, C.O.I., August 16, 1960.)

Southern Rhodesia

Debate. On July 26, 1960, the House of Commons debated incidents of violence in Bulawayo (627 H.C. Deb. 1533–1563).

Legislature. On August 16 the Prime Minister of Southern Rhodesia presented to the Southern Rhodesia Legislative Assembly a Constitution amendment Bill to increase the membership of the House from its present size of thirty seats to fifty. It also increases the compulsory minimum number of rural seats from eleven to eighteen. The Bill was passed on August 24 with the necessary two-thirds majority.

In moving the second reading of the Bill, Sir Edgar Whitehead said that the number of members had been thirty since the grant of responsible government in 1923, but in the meantime there had been a tremendous increase in the work of the House due to the development of the country. The number of voters had greatly increased. The rural constituencies had increased in size and members found it more and more difficult to represent them.

Before federation, a select committee had studied the question, but when federation came it was considered that the work of the Southern Rhodesia Assembly would decrease to such an extent that it would not be necessary to increase the membership. Events had not borne this out and it was probable that, as the result of the constitutional review, certain subjects would return to the jurisdiction of the Southern Rhodesia Parliament, and the work of the members would become even more onerous.

The timing of the introduction of the Bill had been fixed by the need to hold early elections. The period between the passing of the Bill and the time when an election could be held was approximately seven months. Sir Edgar Whitehead said: "I suggest that we take the steps now to increase the House to fifty members, then we shall be in a position to have a general election next May in which the country can pass judgment on the outcome of the Federal talks and select their government to carry on in the new circumstances."

He believed that when the House was increased to fifty there would be three or four African members in the first instance. "It would be for the real benefit of Southern Rhodesia as a whole if that were to happen. It would assist us internally by hearing direct the views of people whom at present we only hear at second hand. It would help us externally as it would show that we are not going to keep this House as a European preserve for all time." (Commonwealth Survey, C.O.I., September 13, 1960.)

Sierra Leone

Additional Instructions

Additional Instructions, dated June 23, 1960, amend the Sierra Leone Royal Instructions, 1958.

Letters Patent

The Sierra Leone Colony Letters Patent, 1960, dated June 23, 1960, amend the Sierra Leone Colony Letters Patent, 1951–58.

Somaliland

Independence

On June 26, 1960, the former United Kingdom protectorate of Somaliland became an independent state. To mark the occasion, messages of goodwill were sent both by the Queen and by the United Kingdom Secretary of State for the Colonies. The Queen's message was as follows:

> "I, my Government and my people in the United Kingdom wish you well on this Day of Independence.
>
> "The connection between our peoples goes back some 130 years, and British administration of the Protectorate for sixty years. I look forward to a continuing and enduring friendship between our two countries."

The territory of Somalia under Italian Trusteeship became independent on July 1, 1960, and on the same date entered into a union with the former British protectorate to form a new Somali Republic.

As has already been reported, the United Kingdom will continue to give various kinds of assistance to the former protectorate during the early stages of independence. Financial aid amounting to £1·5 million will be provided over the next year, half of which will be devoted to development expenditure. A United Kingdom aid mission, consisting of officers formerly in the public services of the protectorate, appointed by the United Kingdom Government at the request of the Somali Government, will continue to serve for an interim period covering the first six months of independence; and for the same period British military personnel will continue to be available for secondment to the Somaliland Scouts, a local defence force.

The United Kingdom Government has also undertaken to provide financial aid of £100,000 to Somalia in its first year of independence. (Commonwealth Survey, C.O.I., July 5, 1960.)

The Aliens (Former Somali British Protected Persons) Direction, 1960, provides that during the year following the grant of independence to the Somaliland Protectorate on June 26, 1960, former Somali British protected persons ordinarily resident in the United Kingdom on that date shall be exempted from certain provisions of the Aliens Order, 1953 (S.I. 1960 No. 1086).

The British Protectorates, Protected States and Protected Persons (Amendment) Order in Council, 1960, makes an amendment to the British Protectorates, Protected States and Protected Persons Order in Council, 1949, consequent upon the attainment of independence by the territory formerly known as the Somaliland Protectorate (S.I. 1960 No. 1366).

South Africa

Referendum on Republic

Dr. Verwoerd, the Prime Minister of South Africa, announced that the referendum to decide whether South Africa should become a republic would be held in the Union and South-West Africa on October 5. At the same time he announced the intention of the Government that, should a majority vote in favour of a republic, they would approach the Prime Ministers of member states in the usual way for the hitherto formal approval to remain a member of the Commonwealth.

Dr. Verwoerd added: "Although the Government do not lay claim to any prior assurances they are firmly convinced that mutual and common interests will lead to such approval, notwithstanding mutual differences.

"In addition, the Government announces that the referendum will be held on the clear understanding that if South Africa is refused continued membership of the Commonwealth the establishment of the republic will be proceeded with. If South Africa is refused continued membership of the Commonwealth it will not be on account of becoming a republic but because it does not agree to demands which amount to interference in domestic policy. Furthermore, the Government announce that they will then do everything in their power to establish the friendliest possible relationships with Britain and other friendly Commonwealth states.

"A favourable result of the referendum will thus be accepted as a mandate to bring into being through parliamentary legislation a republic that is to stay a member of the Commonwealth if permission is obtained (as would be preferred) or one that is not to stay a member (but will seek friendly relationships) if membership is refused."

In statements following this announcement, Sir de Villiers Graaf, leader of the United Party, and Dr. Steytler, leader of the Progressive Party, announced their intention of opposing the republic. Sir de Villiers Graaf said that any vote for a republic would have to be on the assumption that the Union would be outside the Commonwealth (Commonwealth Survey, C.O.I., August 16, 1960).

State of Emergency

The Union Government announced on August 26 that it had decided to lift the state of emergency from August 31. The state of emergency was proclaimed on March 20.

Swaziland

Colonial Report

The report for 1958 has been published by the Colonial Office (H.M.S.O. 58–1–42–58).

Tanganyika

Orders in Council

The Tanganyika Order in Council, 1960, amends the provisions of the Tanganyika Order in Council, 1920, as amended, and constitutes the office of Deputy Governor of the Territory. It also makes fresh provision for the appointment and tenure of office of judges of the High Court of the Territory, and of the Director of Audit (S.I. 1960 No. 1373).

The Tanganyika (Legislative Council) (Amendment No. 3) Order in Council, 1960, makes a consequential amendment to the Tanganyika (Legislative Council) Order in Council, 1926, as amended, following on the constitution of the office of Deputy Governor, makes provision concerning legislative measures relating to the public service and reduces the life of the Legislative Council from five years to four years (S.I. 1960 No. 1374).

Royal Instructions

The Tanganyika Royal Instructions, 1960, dated August 3, 1960, make further provision for the government of Tanganyika.

Trinidad and Tobago

Constitutional Developments

The Secretary of State for the Colonies has recommended that Trinidad and Tobago should have full internal self-government within the Federation of the West Indies. This was announced during his visit to Trinidad in June, where he resumed constitutional discussions which were started in London in the autumn of 1959. A full statement of recommendations for the new constitution has been issued as a White Paper, to be presented to the United Kingdom Parliament and to the Trinidad and Tobago Legislature (Cmnd. 1123).

Uganda

Constitutional Developments

Formal discussions with a group of representative members of the Uganda Legislative Council took place at the Colonial Office, London, at the end of June. At the conclusion of the talks the following communiqué was issued:

"The group came in response to a formal invitation made at the request of representative members of the Uganda Legislative Council and conveyed to them on behalf of the Secretary of State for the Colonies. Twelve members of the Uganda legislature have visited London for these discussions, which arose out of the decisions reached by Her Majesty's Government on the recommendations of the report of the Constitutional Committee (the Wild Committee). The group comprised members who supported the majority recommendations in the report (the majority delegation) and members who supported the minority recommendations (the minority delegation). In addition to the Legislative Councillors, Mr. G. B. Cartland, Chief Secretary-designate, and Mr. C. P. S. Allen, the Administrative Secretary, were present. The Governor Sir Frederick Crawford, was unable to come to London because of Lady Crawford's illness. Lord Ogmore attended the discussions as adviser to the majority delegation.

"After emphasising that, in their view, there had been a lack of a definite and coherent plan for constitutional development in the protectorate, the majority delegation expressed their keen disappointment that, in their view, the decisions reached on the Wild Committee's report had in some important respects fallen short of public expectation. They also sought clarification on a number of other constitutional matters. The Secretary of State explained why he made these decisions, which, he stated, represented a major advance for Uganda but with which the majority delegation disagreed. He took the opportunity to inform the conference that he hoped that, following the elections in 1961, political circumstances within Uganda would enable the protectorate to make rapid progress towards internal self-government and the final goal of independence.

"The majority delegation raised important questions relating, among other things, to the forthcoming elections, with special reference to universal adult suffrage on a common roll, and the constituencies covering the whole country; to the composition of the Executive Council; to the creation of specially elected members; to the power of nomination, and to the appointment of a Chief Minister. The Secretary of State, in reply, assured the delegation that he would be embodying his conclusions on the recommendations of the Wild Report, in a dispatch to the Governor which would be published. He further said, in reply to representations from the majority delegation, that, in the event of the elections showing a clear result, he would consider the situation at once.

"The Secretary of State made it clear that decisions would need to be taken as early as possible on the final form of Government which would be best suited to the needs of an independent Uganda; for that reason he was proceeding with the appointment of a Relationships Commission. The majority delegation expressed their views on the importance of the Relationships Commission, the need for it to be appointed early, and on its membership and scope.

"The minority delegation expressed themselves as generally satisfied with the Secretary of State's statements, but emphasised the need for there to be a clear direction of purpose in constitutional and political matters so that stability and confidence in the country, particularly in the economic sphere, could be maintained.

"The majority delegation raised other points relating to:

(*a*) the promotion and training of civil servants so as to cater for the legitimate needs of locally recruited staff, and to further the policy of Africanisation; and

(*b*) the urgent need for economic development, particularly as to the requirement of the supply of external finance and management techniques." (Commonwealth Survey, C.O.I., July 19, 1960.)

(See also 627 H.C. Deb. 712–713; 224 H.L. Deb. 913–914.)

West Indies

Constitution

On August 3, 1960, the Queen made an Order in Council conferring internal self-government on the Federation of the West Indies and the Order in Council (except for certain sections dealing with the Public Service) was brought into operation on August 16 by proclamation of the Governor-General. Sir Grantley Adams, elected Prime Minister under the original Federal Constitution, has been appointed Prime Minister under the new constitutional arrangements. In a broadcast, Sir Grantley Adams described the introduction of the new system of government as the beginning of the last stage on the Federation's road to full independence.

The principal changes in the Federal Constitution which are effected by the Order in Council are as follows:

The Federal Government is invested with full control over all matters within the constitutional responsibility of the Federation except for defence and external affairs, in respect of which ultimate responsibility and control is still retained by the United Kingdom Government.

The former Council of State, which was presided over by the Governor-General, has been replaced by a Cabinet of Ministers, which will normally be presided over by the Prime Minister.

The Prime Minister, instead of being elected by the House of Representatives, is appointed by the Governor-General as being the person who in his judgment is best able to command the confidence of the majority of the members of the House of Representatives.

The number of ministers will be determined by the Prime Minister and the appointment of ministers and parliamentary secretaries will be by the Governor-General on the advice of the Prime Minister. Nominated public officers, three of whom sat in the Council of State, will not attend meetings of the Cabinet.

The Public Service Commission will in due course become an executive body and apart from certain special cases the Governor-General will act in accordance with the recommendations of the commission in respect to appointments to and disciplinary control over, the Federal Public Service.

An executive Judicial Service Commission will also be established in due course with similar functions in relation to the appointment of the Federal judges (other than the Federal Chief Justice) and certain officers of the Federal Supreme Court.

The Cabinet system of government has been introduced at the request of the Federal Government and the various changes in the constitution are based on proposals presented by the Federal Government to the House of Representatives in May 1960 (Commonwealth Survey, C.O.I., August 30, 1960).

Windward and Leeward Islands

Judiciary

The Windward and Leeward Islands (Courts) (Amendment) Order in Council, 1960, makes certain amendments to the Windward Islands and Leeward Islands (Courts) Order in Council, 1959, with respect to the appointment of officers of the Supreme Court and the Court of Appeal (S.I. 1960 No. 1658).

BOOK REVIEWS

INTERNATIONAL LAWYERS' CONVENTION IN ISRAEL—1958. [Ministry of Justice, The Library.]

THIS volume records seven sessions of a conference of jurists held to honour the tenth anniversary of the founding of the State of Israel. The topics include the spirit of Israeli law, the reception of common law and equity in Israel, constitutional law, and branches of Israeli law. The part dealing with the reception should be of great interest to anyone concerned with the choice or criticism of law.

For public lawyers there are sections on social and labour legislation (Justice Zvi Berinson); Malaya (Prof. Z. Cowen); on responsibility before the law (Lord Denning); and individuals' rights in Israeli law (Mr. Gideon Hausner). The reviewer found Professor Azkin's display of tools for entrenchment of most interest (it should be remembered that Israel has no basic constitutional document). It looks as though the general will must always find a way—and, with this in mind, no sensible lawyer need get hurt when the rush to take it begins.

One reviewer cannot deal adequately with a book of this scope—but the more familiar parts seem respectably technical, and free from those pieties which so often seem natural to a convention.

D. J. BENTLEY.

NATURAL JUSTICE. By H. H. MARSHALL, C.M.G., LL.B., Q.C. [London: Sweet & Maxwell, Ltd. 1959. xxiii and 196 and (Index) 5 pp. 35s.]

THERE is in this book much that will already be familiar to many; what is new is the shape and scope of the presentation of the material. The author's main claim is to have brought together in one volume a discussion of the theme of natural justice in all its varied applications, in relation to courts, public and domestic tribunals, or arbitrations, and its application in private international law. These applications are discussed against the background of a short historical account of the development of the principles. Thus the work goes beyond any ordinary discussion of judicial review.

There is undoubtedly interest in this survey, and the book emphasises the haphazard and somewhat uneven application of the principles, and such a consideration of the application of the principles of natural justice in varied contexts is valuable. On the whole, however, the different applications tend to be treated in isolation. Indeed there are times when the reader hopes for a rather more critical approach to the authorities and looks for some further attempt at a reconciliation of them. Thus, the suggestion in *Lee* v. *Showmen's Guild of Great Britain* [1952] 2 Q.B. 329 that there are limits beyond which a contract cannot go in excluding the principles of natural justice, is pointed out alongside the contrary suggestion in *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109, but the reader is left to determine for himself what is the solution of the conflict. It is then rather for the collection of material and the thoughts which that collection provokes in the reader's mind than for its critical discussion that the book will be valued. Perhaps one difficulty is that, while the cases are grouped by subject-matter, the significant differences which are caused by the whole setting of each group are not brought out. The principles of natural justice are only one set of principles, and their application cannot be automatic, but is determined by the intervention of others, or by the general pattern of ideas at any one time. To say of the "housing" cases "the legislature in 1909 disregarded the fundamental principles with the result that there

has grown up a highly technical branch of the law" is no doubt true. Yet allowance has to be made, in making what is taken to be an implied criticism of the legislature, for the whole structure and operation of government, and for the fact that ultimately government cannot be put out to arbitration. The legislation at the beginning of this century was in part the result of learning from the nineteenth century that government by arbitration could not be made to work. Again in the context of private international law the recognition of foreign judgments as conforming to the principles of natural justice is as much governed by the rules of domestic practice as by consideration of those principles. The value of the book would have been enhanced had it been more discursive, particularly for students. The definition of quasi-judicial in the Report of the Committee on Ministers' Powers is cited with only mention of a caution by Cohen L.J., but the student could helpfully have been put on the track of some of the serious criticisms of that definition which might enlarge his understanding of the possible scope of application of the principle under discussion. Similarly a fuller discussion of the extent to which the Tribunals and Inquiries Act has restored the importance of the principle would have been welcome. Despite such criticisms the book is a useful addition to the literature on the subject, which can open up lines of thought.

J. D. B. Mitchell.

The French Constitution of October 4th, 1958. By William Pickles. [London: Stevens & Sons Ltd. 1960. 52 pp. 6s. 6d.]

Of translations into English of the Constitution of the Fifth Republic of France this is the fifth to appear, and—let it be said at the outset—by far the most useful.

It is, of course, much more than a simple translation. The translation of the text itself is massively footnoted, and after the translation of each Title or group of Titles which hang together, there follow detailed comment and discussion. The latter, together with extensive references to the Organic laws so far promulgated in supplement of the Constitution, render this monograph a most valuable tool for both basic and advanced study. (It might have been rendered even more useful if the text of the Organic Laws had also been appended. A second edition might perhaps remedy this.)

The analytical approach and treatment adopted by Mr. Pickles commend this work to the lawyer as much as to the political scientist, despite the somewhat astonishing remark in the opening paragraph that the Constitution ". . . if it survives long enough . . . becomes absorbed into the political landscape which by then it will have helped to re-form. *By that time there will be no justification for any study of its text.*" (The italics are mine.) I freely concede that no written constitution tells the whole story of the governmental process which it sets in motion, that it is not much more than a form of "film script," from which a larger reality is created as a work of art. Nonetheless, the constitutional text does dictate the basic "story-line," and we cannot fully understand the ending—happy or tragic—without a linking reference to the source. It may be, of course, that it is the greater necessity to be functional rather than descriptive which sets off the art of the constitutional lawyer from that of the political scientist.

It is perhaps the approach from the latter viewpoint which leads Mr. Pickles to request us to "Note also that the word 'Republic' is heavily charged with emotional overtones implying among other things, a great deal of what is conveyed in English by 'democracy.' Its use in the Constitution of the Fifth Republic is as deliberate and as significant as was its omission from the title of the Vichy régime."

I suggest that the term "Republic" has a more subtle and functional significance here. There are various kinds of democracy from Westminster to Djakarta, and French theories of it are probably not less vague than any other. "Republic," however, suggests an underlying concept that the whole

is something larger than the sum of the parts, and I would submit that President de Gaulle considers himself and the French people as having an interdependent loyalty and obligation to a larger entity—" la France." On such a concept neither authoritarianism nor plebiscitary submission is repugnant to parliamentary institutions; consistency in democratic forms is subsidiary to a functional serving of the substantive interests of " la France." Put another way, " Republicanism " for President de Gaulle implies that ultimate power lies with " France " and not with individuals, certainly not himself. It is unlikely that the Vichy régime felt such a superior obligation.

Republicanism in this sense has, therefore, an ethical content which elevates it beyond the totalitarian " state." A certain analogy may be drawn with the United States where, to the political scientist, the United States Supreme Court may appear to be not at all a " democratic " body. But the Oath of Allegiance is, after all, " . . . to the flag of the United States of America and to the Republic for which it stands."

Consequently I consider that some reference to the American experience would have proved a most useful addition to Mr. Pickles's analysis. For, in the Fifth Republic of France, if (a) you take away the President's power to dissolve Parliament and Parliament's power to bring down the government, and (b) increase the power of the *Conseil Constitutionnel* to the point of allowing it to be set in motion by individuals or *ex proprio motu,* you have a system not too far removed from that of the United States. Certainly there are clear points of analogy in the respective Presidential powers. To instance only two areas: the Presidential veto in the United States was originally expected to be used only on constitutional and not on political grounds; there is nothing in Article 10 of the new French Constitution which appears to prevent the Presidential power to request *une nouvelle délibération* from developing into a political weapon: and secondly, the great power and influence which President de Gaulle has exercised in foreign affairs is not controverted by the terms of the Constitution, and corresponds to the wide powers achieved in this field by various American Presidents' similar broad interpretation of the scope of their constitutionally stated powers. Similarly, the distinction made by Articles 34 and 37 of the new Constitution between *le domaine de la loi* and matters which have *un caractère réglementaire* might be seen as an analogue of the enumerated and reserved powers of the American federal republic.

So far I have alleged principally sins of omission. On the commission side, I will not condemn but will perhaps cavil; a universally agreeable translation of a technical document such as this is an impossibility, and I mention only one or two of the more debatable points.

In Article 5 (and throughout) I feel that " public authorities " is not happy as a rendering of " *pouvoirs publics.*" It smacks too much of the town or county council to the English-speaking ear and inadequately covers the institutions detailed by Mr. Pickles in footnote 11 on page 4. Something of the order of " the powers of government " or " governmental authority " might be more significant in its imprecision. Better still, the French word might have been left to stand untranslated, a device Mr. Pickles adopts occasionally elsewhere, if no suitable equivalence exists. I am not at all satisfied with " Matters regulated by laws " for " *les matieres du domaine de la loi* " in Article 37 and " the provisions of the law " for " *dispositions de nature législative* " in Article 53. The proper contrast with matters which have " *un caractère réglementaire* " is surely " legislation." Executive regulations, orders, decrees or ordinances are all equally " law " or " laws " but are not " legislation " unless one uses some such term as " executive legislation." Whether the latter is an improvement over Mr. Pickles's " the field of rule-making " as a translation of matters which have " *un caractère réglementaire* " is more debatable. There is an omission in Article 52, rendered as " He is informed of the negotiation of any international agreement . . . ", omitting the original's " *tendant à la*

conclusion" i.e. " negotiations *leading to* the conclusion of any international agreement," which might possibly be of wider implication. There appears to be a misprint in footnote 9 on page 3; should not " ideal " read " deal "?

And, of course, there is the characterisation of so much of these criticisms. One can say " should not " or " might not " such-and-such be an *improvement.* None can deny the valuable contribution which Mr. Pickles' work makes to our knowledge and thinking.

VICTOR S. MACKINNON

INDEX

Agricultural Land Commission, 100, 194
Agricultural Research Council, 399
Agricultural Research Fund, 196
Agriculture, 288
Agriculture Act,
  disciplinary powers, 367–395
Ancient Monuments Boards, 300
Antigua, 422
Australia,
  excise taxing powers, 242–244
  public employment in, 246–255

Barbados, 107
Basutoland, 107, 214, 305
B.B.C., 106, 213, 305
Bechuanaland, 107, 214, 305, 422
Birkett Committee, 5–8
Board of Control, 100
Book reviews 121, 316, 435
British Guiana, 108, 305
British Honduras, 214
British Solomon Islands, 422
Brunei, 108, 306

Cameroons, 109, 422
Cayman Islands, 306
Central Africa, 116
  African Affairs Board, 141–144
  case against Federation, 18–35
Central Land Board, 100
Civil Service,
  pay, 195
  staffs employed, 287
Colonial Development Corporation, 106, 305, 422
Commonwealth and Dependent Territories,
  colonial development, 106, 305, 421
  colonial research, 213
  colonial services, 213
  colonial territories, 305
  Commonwealth affairs, 214
  Commonwealth Institute, 214
  Commonwealth Prime Ministers' Conference, 422
  current survey, 106–120, 213–232, 305–315, 421–434
  Prime Minister's visit to Africa, 214
  See also under particular countries.
Compulsory purchase,
  compensation, 285, 396
  police housing, 12–14
Council on Prices, Productivity and Income, 287
Council on Tribunals, 303, 351–366
Courts. *See also* under particular courts and particular countries.
  English prosecution, 170–176
  exclusion of jurisdiction, 14–17
  judicial and legal appointments, 285
  judicial pensions, 74
  legal aid and advice, 74, 190, 396
  statistics, 74, 397
Crown liability,
  authorised government departments, 75
  contract, 397
  privilege, 191
  servants' dismissibility, 9–12, 75
Crowther Report, 76
Cyprus,
  constitution, 216, 423
  developments, 109–111
  negotiations, 306

Defence,
  1960 Report, 195
Dominica,
  colonial report, 423
  constitution, 216

East Africa, 111
Education,
  adult, 191
  primary schools, 287
  Scotland, 288
  teachers, 287
  universities, 287
  Wales, 287
  youth service, 191, 287

Fiji, 423
Forestry Commission, 300
France,
  la communauté, 177–189

Gambia, 111, 306
General Election 1959,
  some reflections, 36–49

National Insurance (Industrial Injuries)—*cont.*
decisions—*cont.*
pneumoconiosis, 296
post-war credits, 296
prescribed diseases, 93
prolapsed intervertebral disc, 296
refusal to have operation, 94
review of decision, 94
special hardship allowance, 95, 296, 411
suicide after accident, 205
travelling to work, 205, 297
"trigger finger," 297
report, 411
National Research Development Corporation,
report, 76
Nationalised industries,
advances, 297
airways, 96, 206, 299, 411
atomic energy, 96, 298, 412
capital expenditure, 297
coal, 96, 206, 298
electricity, 97, 206, 298, 412
finance, 205
gas, 97, 206, 298, 412
Parliament, relations with, 98
transport, 98, 206, 298, 412
Natural Justice, 8–9
New Towns, 106, 300, 413
Nigeria, 114, 222, 307, 426
North Borneo, 427
Nyasaland. *See under* Rhodesia and Nyasaland.

Ombudsman,
In Britain? 145–151
Research Committee on, 244–245

Pakistan, 114
Parliament,
House of Commons,
accommodation, 98, 207, 299
election, 412
election petitions, 207, 299
Estimates Committee, 98, 208, 299, 412
Members, 98
Members' Fund, 413
privilege, 299, 329–331, 413
procedure, 413
Public Accounts Committee, 99, 209, 300, 413
questions to Ministers, 209
representation, 209
Speaker, 99
urgent motions in, 270–284
Parliament—*cont.*
House of Lords,
leave of absence, 98
offices, 98, 299
procedure, 300
nationalised industries, 98, 208
Northern Ireland, 208
opening, 99
Parliamentary Commissioner, 99
Private Bills, 99
privilege, 99, 208, 299
procedure, 99, 208, 300
Royal Assent, 100, 209, 300, 413
Police,
Garratt v. *Eastmond*, 79
housing, 12–14
inspectorate, 288, 398
interception of communications, 5–8, 76
prosecution, 170–176
Royal Commission, 80, 233–240
Public Authorities, 100, 209. *See also* under particular Authorities.
Public Works Loan Board, 413

Radcliffe Report, 1–5, 76
Railways,
inquiries, 78, 197, 289
Rating. *See* Local Government.
Remedies,
certiorari, 101, 300, 414
declaration, 14–17
habeas corpus, 102, 301
injunction, 414
mandamus, 301
Restrictive Trade Practices,
account of progress, 81
agreements registered, 20, 401
Court, 84–85, 290–291
critique of the legislation, 152–169
decisions, 201, 290, 401
Rhodesia and Nyasaland,
Constitutional developments, 308, 427
Federation, case against, 18–35
Monckton Commission, 116, 222, 324–329
Northern Rhodesia, 223, 309, 427
Nyasaland, 428
Southern Rhodesia, 309, 430
Road Traffic Act, 1960...210
Royal Commissions and committees of inquiry, 196
Royal Fine Art Commission, 101, 300

St. Christopher, Nevis and Anguilla, 223
St. Lucia, 223
St. Vincent, 223

Sarawak, 223
Scotland,
courts, 74, 191, 285
education, 288
grant regulations, 418
health, 288
National Health Service, 85
nationalised industries, 206
Royal Fine Art Commission for Scotland, 300
Scottish Health Services Council, 292
town and country planning, 302
tribunals, 105
Seychelles, 309
Sierra Leone, 111, 223, 310, 430
Singapore,
colonial report, 224, 311
constitution, 50–73
Somaliland, 117, 224, 311, 431
South Africa,
High Commission Territories, 313
policies, 313
Prime Ministers' speech, 224–228
referendum, 431
riots, 228
Security Council, 228, 314
state of emergency, 432
status, 228
U.K. citizens, 314
Statutory interpretation,
Income Tax Act, 132–134
Subordinate Legislation,
House of Commons committee, 102, 210, 301, 415
House of Lords committee, 103, 210, 302, 415
Sugar Board, 101, 210, 413
Swaziland, 107, 214, 305, 432

Tanganyika, 117, 229, 314, 432
Town and Country planning,
accounts, 415
advertisement control, 211, 302
appeals, 103
building preservation, 415
caravan sites, 416
delegation, 103, 211
development plans, 417
development value, 417
enforcement notice, 211, 302, 417
industrial development and protection of countryside, 104
local administration of Planning Acts, 418
" person aggrieved," 418
Piccadilly Circus, 104
planning appeals, 105, 256–269, 302
purchase notice, 302
Town and Country Planning—*cont.*
Scotland, 302, 418
use classes, 212, 418
Traffic Commissioners, 101
Transport, inquiries, 78, 197, 289, 399
Tribunals and Judicial Functions of Ministers,
Agricultural Land Tribunal, 418
Air Transport Licensing Board, 419
Council on Tribunals, 303, 351, 366
disciplinary bodies, 104, 303, 419
Finance Act Tribunal, 419
Franks Committee recommendations effected, 212
Income Tax Commissioners, 304
Lands Tribunal, 104
Mental Health Review Tribunals, 105, 304, 419
National Assistance, Insurance and Industrial Injuries Tribunals, 304
National Insurance Adjudicator, 105
National Service, 420
National Service Umpire's decisions, 105
Pensions Appeal Tribunals, 105, 213, 304
planning appeals, 105
Transport Tribunal, 299
Trinidad and Tobago, 118, 314, 432

Uganda, 118, 230, 315, 433
United Kingdom,
current survey, 74–106, 190–213, 285–305, 396–421

Virgin Islands, 231, 315

Wales,
broadcasting council, 421
council for Wales, 106
developments, 213
hospital service, 421
West Indies,
Cabinet Government, 231
conference, 118
constitution, 232, 434
tour, 315
White Fish Authority, 101, 210, 413
Windward and Leeward Islands,
courts, 232
emergency powers, 232
judiciary, 434
Police Service Commission, 232

Wireless and Television,
B.B.C., 106, 213, 305
Broadcasting Council for Wales, 421
commercial sound broadcasting, 106
committee of inquiry, 421
I.T.A., 106, 305
parliamentary proceedings, 213
Wireless and Television—*cont.*
Television Advisory Commission, 305

Youth Service, 191, 287

Zanzibar, 120, 315

PUBLIC LAW

incorporating

The British Journal of Administrative Law

The Case Against Federation in Central Africa — COLIN LEYS

Some Reflections on the Late Election — BERNARD CRICK

The Constitution of the State of Singapore — O. HOOD PHILLIPS

Comment — Current Survey — Reviews

Spring 1960

Pages 1—128

150 YEARS A STEVENS Publication 1810-1960

Government, Law and Courts

in the Soviet Union and Eastern Europe

Editors:

VLADIMIR GSOVSKI and KAZIMIERZ GRZYBOWSKI

'. . . a complete picture of the legal systems of Eastern Europe and their transformation since the last war. The authors, experts in the law of Soviet Russia, review the origin of the Communist régime and examine within each country the administration of justice, the judicial procedure, criminal law, the sovietisation of civil law, industrial relations, and the systems of socialised agriculture.'—*Solicitors' Journal*

'The treatment is objective both in the verbatim presentation of enactments and in the account of their enforcement in actual practice; while the comments are fair, although often pungent—from which emerges a clear, vivid and realistic picture of Russian socialist government. So that, in spite of the difference of outlook and the double-talk (of which there is plenty in legal literature), the Anglo-Saxon lawyer is given an opportunity of forming at a distance a shrewd idea of the life that is led in Eastern Europe and of the problems with which his confrères have to battle to regulate it.
. . . no praise is too high for the skill and conscientiousness shown by the editors and contributors of this legal encyclopaedia. They ought to be congratulated on their unqualified success in producing a *magnum opus* which must be studied and referred to by many lawyers.'—*Law Times*

In two volumes, Glossary, Appendices

£8 8s. net

ATLANTIC BOOKS

STEVENS AB *& SONS*

Subscription for 1960 - - £2 10s. post free
Single Parts for 1960 13s. 6d. - - Spring-Summer (1956) Part 25s.

1979-1

1981 1

1983-1

1984-1

1986-1

1987 - 11

88-1